

IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals
RIORDAN, P.J., and FORT HOOD and SWARTZLE, JJ.

In re Smith Minors

Supreme Court No. 161525
Court of Appeals No. 351095
Kalamazoo Circuit Court; Family Division
LC No. 18-000053-NA

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**AMICI CURIAE BRIEF OF THE LEGAL SERVICES ASSOCIATION OF MICHIGAN
AND MICHIGAN STATE PLANNING BODY FOR LEGAL SERVICES**

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QUESTIONS PRESENTED FOR REVIEW

In its Order dated September 23, 2020, the Court ordered the parties to provide supplemental briefing addressing the following three issues:

1. Whether a child's chronic absence from school is, on its own, a sufficient basis for the trial court to assume jurisdiction on the ground of educational neglect as contemplated by MCL 712A.2(b)(2);

Trial Court's Answer:	Yes.
Majority of the Court of Appeals:	Yes.
Dissenting Court of Appeals:	No.
Appellant-Father:	No.
Appellee-DHHS:	
Appellee-L-GAL:	
<i>Amici Curiae</i> :	No.

2. (a) Whether proving allegations of educational neglect requires demonstrating that the child has suffered harm, see MCL 712A.2(b)(1)(b), and, if so, (b) what constitutes harm for these purposes; and

Trial Court's Answer:	No.
Majority of the Court of Appeals:	No.
Dissenting Court of Appeals:	Yes.
Appellant-Father:	Yes.
Appellee-DHHS:	
Appellee-L-GAL:	
<i>Amici Curiae</i> :	Yes.

3. Whether the trial court clearly erred when it exercised jurisdiction over the minor children solely on the basis of educational neglect pursuant to MCL 712A.2(b)(1).

Trial Court's Answer:	No.
Majority of the Court of Appeals:	No.
Dissenting Court of Appeals:	Yes.
Appellant-Father:	Yes.
Appellee-DHHS:	
Appellee-L-GAL:	
<i>Amici Curiae</i> :	Yes.

STATEMENT OF INTEREST OF AMICI CURIAE.

The Legal Services Association of Michigan (“LSAM”) and the Michigan State Planning Body for the Delivery of Legal Services (“MSPB” and together with LSAM, “*Amici*”) submit this joint *amici curiae* brief to the Michigan Supreme Court in *In re Smith*. With this brief, *Amici* seek to advance MSPB and LSAM’s interest in ensuring that all Michigan parents and their children receive the statutory and constitutional protections they deserve.

LSAM is a Michigan nonprofit organization incorporated in 1982. LSAM’s members are twelve of the largest civil legal services organizations in Michigan and collectively provide legal services to low-income individuals and families in more than 50,000 cases per year.¹ LSAM members have broad experience with a variety of family law cases in which a low-income parent’s rights to custody of his or her child are at stake, including custody and parenting time cases, third-party custody actions, minor guardianship cases, child abuse and neglect cases, paternity proceedings, and adoption proceedings. LSAM members share a deep institutional commitment to ensuring that the rights of low-income families, parents, and children are respected in these proceedings. Almost all LSAM members work in public benefits, family law, and housing cases with low-income families that are involved in and impacted by family law proceedings. All LSAM members are institutionally interested in and committed to providing fair and equal access to the justice system for low-income individuals.

MSPB is an unincorporated association of thirty-five individuals, including leaders of the bench, the legal services community, the private bar, and community services organizations. First

¹ LSAM’s members are: the Center for Civil Justice, Lakeshore Legal Aid, Legal Aid and Defender, Legal Aid of Western Michigan, Legal Services of Eastern Michigan, Legal Services of Northern Michigan, Michigan Advocacy Program, Michigan Indian Legal Services, Michigan Migrant Legal Assistance Program, Michigan Legal Services, Michigan Poverty Law Program, and the University of Michigan Clinical Law Program.

created through a mandate of the Legal Services Corporation (“LSC”), MSPB acts as a forum for planning and coordinating the state’s efforts to deliver civil and criminal legal services to the poor. Although LSC no longer requires that states have a formally designated State Planning Body, MSPB continues to function at the request of the programs and their state funder. MSPB’s mission is to plan, organize, and coordinate an effective civil legal services delivery system in the State of Michigan. Along with coordinating pro bono services, MSPB advocates on behalf of the state’s indigent to the Michigan Supreme Court, the State Bar of Michigan, and the State Court Administrative Office. Central to MSPB is its commitment to assuring equal access for the poor to the legal system, including the family court system.

Amici believe it is crucial for this Court to reverse the Court of Appeals’ split decision in this case because the trial court did not have jurisdiction over the Appellant-Father’s children under MCL 712A.2(b). The record establishes that Appellant-Father’s two children, Brianna and Brian Jr., attended school 74% and 75% of the time, respectively, during a portion of one school year. Their school’s average attendance rate is 85%. ***No evidence exists that the children were harmed or falling behind academically because of these absences.*** Instead, the evidence of record shows that Brian Jr. was progressing at grade level. There is no evidence relating to Brianna’s academic progress. Despite this, both the trial court and the Court of Appeals found that the record contained sufficient evidence of educational neglect under MCL 712A.2(b) to exercise jurisdiction over Brian Jr. and Brianna.

Amici urge this Court to hold that school absence, alone, is not enough to exercise jurisdiction over children in a child welfare proceeding. As Judge Riordan pointed out in his dissent, the record in this case contained no evidence of neglect—*i.e.*, harm—to the children

resulting from their slightly below-average attendance. Without any evidence of harm in the record, the trial court could not find neglect by a preponderance of the evidence.

Amici submit that the issue presented is of critical importance to families in Michigan, where roughly one in six students is chronically absent from school. The issue is also timely; this case comes before the Court during the COVID-19 pandemic, which closed many Michigan schools and forced children, their parents, and their school districts to redefine the contours of primary education. Particularly in this climate, *Amici* believe it is imperative for the Court to provide guidance to lower courts in exercising jurisdiction over children on the grounds of educational neglect.

I. INTRODUCTION

This case asks the Court to determine whether a child's school attendance rate alone ever arises to neglect such that it jeopardizes a parent's rights to a relationship with their child. Here, the trial court assumed jurisdiction over the Smith children, and ultimately terminated their father's parental rights, based only on their attendance records and without a shred of evidence of any harm to the children outside of missed lessons. Quite the contrary, even in the face of these missed school days, the record reflected that the children were progressing at grade level and were not exhibiting any behavioral issues at school. This Court should reverse the Court of Appeals' ruling upholding the trial court's termination of the Appellant-Father's parental rights for three reasons.

First, a child's chronic absence from school is not on its own a sufficient basis for a trial court to assume jurisdiction over a child on the grounds of educational neglect. Michigan law requires evidence of *actual* neglect, and without more, a child's absences alone falls short of meeting this standard. The Court must be especially cautious of adopting a sweeping rule that equates chronic absenteeism to educational neglect because of the slippery slope it has the potential to create. This is especially salient in today's world where distance learning as a result of the COVID-19 pandemic has led to more rampant absenteeism amongst school-age children.

Second, the record in this case contained no proof that the children suffered harm. Proving allegations of educational neglect requires demonstrating that the child has suffered harm in some way. This is a fact intensive inquiry that must be made on a case-by-case basis.

Finally, the trial court's exercise of jurisdiction over the Smith children solely on the basis of educational neglect was clear error that warrants reversal.

This Court should reverse the trial court's termination of Mr. Smith's parental rights.

II. CHRONIC ABSENTEEISM IN MICHIGAN

Chronic absenteeism, which is typically defined by scholars as missing 10% of a school year for any reason,¹ has been dubbed by the U.S. Department of Education a “hidden educational crisis.”² Michigan had the sixth-highest chronic absenteeism rate in the nation *before* the COVID-19 pandemic turned traditional in-person education on its head.³ Since March of this year, the pandemic has only worsened the state’s absenteeism crisis.

While there are high rates of absenteeism in every region of Michigan,⁴ students within certain communities are much more likely to be chronically absent than others. Economically disadvantaged students, for example, are chronically absent at three times the rate of higher-income peers.⁵ Thirty-two percent of African-American students in Michigan were chronically absent in 2016–2017, whereas 11% of White students and 9% of Asian students were chronically

¹ Robert Balfanz and Vaughan Byrnes, *The Importance of Being in School: A Report on Absenteeism in the Nation’s Public Schools*, Johns Hopkins University Center for Social Organization of Schools (May 2012); see also Center for Education Performance and Information (CEPI), *Michigan Department of Education: MI School Data, Student Counts*, available at <https://www.mischooldata.org/DistrictSchoolProfiles2/StudentInformation/StudentCounts/Attendance2.aspx>.

² U.S. Department of Education, *Chronic Absenteeism in the Nation’s Schools: An Unprecedented Look at a Hidden Crisis*, (June 7, 2016) (ed. Oct. 27, 2016, updated Jan. 2019), available at <https://www2.ed.gov/datastory/chronicabsenteeism.html>.

³ Jennifer Erb-Downward and Payton Watt, *Missing School, Missing a Home: The Link between Chronic Absenteeism, Economic Instability and Homelessness in Michigan* at 1 (Nov. 2018), available at <https://poverty.umich.edu/data-tools/chronic-absenteeism-of-homeless-children-in-michigan/>.

⁴ During the 2016–2017 school year, every region of Michigan had school districts with chronic absenteeism rates of 25% or more. *Id.*

⁵ *Id.*; Sarah Winchell Lenhoff *et al.*, *Chronic Absenteeism and Student Attendance* 9 (2019), available at <https://education.wayne.edu/detroit-education-research-partnership/student-attendance>.

absent.⁶ Across the country, in fact, students within marginalized communities are more likely to be chronically absent from school.⁷

These statistics are based upon the number of “chronically absent” students who miss at least 10% of school days. But many Michigan children are absent far more often than 10% of the time. Indeed, “there [is] a wide range of missed days beyond the 10% minimum threshold.”⁸ In Detroit, for instance, roughly twenty-seven percent of students attended 80% or fewer school days during the 2017–2018 year, with nearly seven percent of students attending only 60% of the time.⁹

Chronic absenteeism is hardly a new issue in Michigan, but the COVID-19 pandemic and attendant statewide school shutdowns¹⁰ have created entirely new challenges to attendance for students and their families. Many schools are teaching remotely, and students and their families are attempting to keep up outside of the physical classroom. In October, Education Week reported that “double the number of students are absent on a typical day compared with normal

⁶ Erb-Downward & Watt, *supra* note 3, at 2.

⁷ See generally Emma García and Elaine Weiss, *Student absenteeism: Who misses school and how missing school matters for performance*, Economic Policy Institute (Sept. 25, 2018). Homeless children, in particular, are far more likely to be chronically absent than their peers; 40% percent of homeless students in Michigan were chronically absent during the 2016–17 school year. Erb-Downward & Watt, *supra* note 3, at 1.

⁸ Lenhoff *et al.*, *supra* note 5, at 8.

⁹ *Id.*

¹⁰ Malachi Barrett, *Whitmer orders all Michigan schools to remain closed through academic year as coronavirus cases surge*, MLive (Apr. 2, 2020), available at <https://www.mlive.com/public-interest/2020/04/whitmer-orders-all-michigan-schools-to-remain-closed-through-academic-year-as-coronavirus-cases-surge.html>; Executive Order 2020-35 (COVID-19) (Apr. 2, 2020); Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order (Nov. 15, 2020); Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order (Dec. 7, 2020).

circumstances.”¹¹ This appears to be true “regardless of whether remote learning is in place or not.”¹² But in remote learning environments, taking attendance is uniquely challenging.¹³

Of course, poverty exacerbates these problems. In Michigan, as of November 2020, students from low-income families were seven times less likely to have in-person instruction than students from wealthy families.¹⁴ And “[t]eachers in the highest-poverty schools report that nearly a third of their students are not logging in or otherwise making contact.”¹⁵ Detroit’s superintendent has acknowledged that while parents are struggling to provide basic needs like food and child care, “[l]earning is not the number one priority.”¹⁶ Access to technology is also an issue; in Detroit, where 40% of the population has no internet connection of any kind, it was “impossible for students and employees to continue their schooling and work remotely” before the district supplied students with laptops and internet connections.¹⁷ But even with these basic access tools, low-

¹¹ Mark Lieberman, *5 Things You Need to Know About Student Absences During COVID-19*, Education Week (Oct. 16, 2020).

¹² *Id.*

¹³ *Id.*

¹⁴ Koby Levin, *Report: Michigan’s most vulnerable students have limited learning options during the pandemic*, Bridge Michigan (Nov. 20, 2020).

¹⁵ See generally Benjamin Herold, *Disparities in Remote Learning Under Coronavirus (in Charts)*, Education Week (Apr. 10, 2020).

¹⁶ Eleanore Catolico, *Detroit Superintendent Wants More Face-To-Face Learning To Encourage Attendance*, Chalkbeat (Oct. 20, 2020).

¹⁷ Press Release, *Commissioner Starks and U.S. Representative Brenda Lawrence (MI-14) Announce Connecting Michigan: From Internet Inequality to Digital Equity* (May 5, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-364162A1.pdf>; Nushrat Rahman, *Back to school puts financial strain on Michigan’s most vulnerable families*, Detroit Free Press (Sept. 29, 2020).

income Michigan families are struggling to provide expensive “school supplies” necessary for remote learning, such as headsets and internet fast enough to keep up with an online classroom.¹⁸

It is also harder now for school districts to identify students at risk of chronic absenteeism and address those risks to limit absenteeism. “[I]nformation such as which students lack internet connectivity, who was chronically absent prior to COVID-19 and . . . whether a student comes from a low-income family, has a disability, is involved in foster care or is homeless” is all relevant to addressing chronic absenteeism.¹⁹ School districts do not have easy access to this information; tellingly, in the face of skyrocketing absenteeism rates, the federal government waived “participation rate” as an Academic Achievement indicator for one year.²⁰ In lieu of tracking attendance, some states have considered shifting toward tracking only whether students are making academic progress.²¹

In late April 2020, when the Court of Appeals issued its opinion in this case, Michigan’s schools had already been closed for several weeks. The Court of Appeals nonetheless decided that “[a] child’s chronic absence from school is a sufficient basis for the trial court to assume jurisdiction” in child welfare proceedings. *In re Smith*, unpublished decision *per curiam* of the Court of Appeals issued on Apr 30, 2020 (Docket Nos. 351095, 351178); 2020 WL 2096136 at *2. *Amici* acknowledge that the coronavirus pandemic did not contribute to Appellant-Father’s

¹⁸ *Id.*

¹⁹ Wade Tyler Millward, *Districts Pivot Their Strategies to Reduce Chronic Absenteeism During Distance Learning*, EdSurge (Jul. 29, 2020).

²⁰ *Id.* In the spring, Governor Whitmer suspended Michigan’s requirement that school districts have a certain minimum number of students in attendance on any day of instruction and waived districts’ requirement to report the attendance rates to the Department of Education. That order has since been rescinded. See Executive Order 2020-35 (COVID-19) (Apr. 2, 2020).

²¹ Anya Kamenetz, *School Attendance In The COVID Era: What Counts As ‘Present’?*, NPR (Sept. 24, 2020).

children’s absences. But *Amici* are deeply concerned that the Court of Appeals’ decision, issued during the pandemic, will give a jurisdictional license to lower courts facing chronic absenteeism issues during this 2020–2021 school year and beyond. If chronic absenteeism alone is enough to establish jurisdiction in a child welfare proceeding, one in six Michigan children could be adjudicated—based on *pre-pandemic* statistics.²² This cannot be the law.

III. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Smith family’s involvement with DHHS began following a series of tragedies. In July 2017, the family was devastated by the accidental death of their eldest daughter. Burdened by a \$3,000 cremation bill, over the next six months the family struggled to cope with both their grief and their financial difficulties. On January 23, 2018, DHHS removed six-year-old Brian Jr. and ten-year-old Brianna from their parents’ care. DHHS petitioned for emergency removal, citing concerns related to housing stability, substance abuse, and domestic violence. 1/24/18 Hr’g Tr at 51–54. At the preliminary hearing the next day, the prosecutor amended the petition to add educational neglect due to the children “not regularly attending school, [being] hungry, unkempt and that affects the education process.” 1/24/18 Hr’g Tr at 53:7–10. The court granted the petition and placed the children with DHHS, and DHHS maintained the children in a foster care placement. 1/24/18 Hr’g Tr at 54:9–11.

At the adjudication hearing on March 28, 2018, the school registrar testified that, between the beginning of the school year and January 29, 2018,²³ Brianna was absent 22 days—a 74%

²² Erb-Downward & Watt, *supra* note 3, at 1 (“Close to one out of every six children [16%] enrolled in the state’s public and charter schools were chronically absent in school year 2016–17.”).

²³ Although the registrar testified as to the children’s school absences between September and January, the Court of Appeals considered the relevant time period to be “from November 2017 to January 2018.” *Smith*, 2020 WL 2096136 at *1.

attendance rate—and tardy 11 times. 3/28/18 Hr’g Tr at 46:8–14. During the same period, Brian Jr. had a 75% attendance rate and was tardy 15 times. Brian Jr.’s first grade teacher testified that while she had concerns about Brian Jr.’s progress because of his attendance, he was performing at grade level. 3/28/18 Hr’g Tr at 58:2–5. No evidence of Brianna’s school performance was submitted. The registrar and Brian Jr.’s teacher testified that communication with Brian Jr.’s parents was difficult, but his teacher was eventually able to reach his mother and had fall conferences by phone. 3/28/18 Hr’g Tr at 61:20–21.

The trial court *rejected* DHHS’s allegations of substance abuse, domestic violence, and housing instability for lack of evidence. 3/28/18 Hr’g Tr at 92:14–17. But it then proceeded to exercise jurisdiction based *solely* on a finding of educational neglect. Compared to the school’s 85% average attendance rate, the court found that, “beyond a reasonable doubt,” the children’s 74% and 75% attendance rates amounted to “child abuse.” 3/28/18 Hr’g Tr at 92:14–17. Even though Brian Jr. performed at grade-level and there was no evidence of Brianna’s academic performance, the court reasoned that a preponderance of the evidence supported taking jurisdiction because “regardless of what a test score says that is going to affect that education . . . process.” 3/28/18 Hr’g Tr at 93:16–17. The court presumed as much in the face of evidence that Brianna was “always in a very good mood” at school, *id.* at 45:9, and Brian Jr. “was always so quiet, he stayed in his seat, he did exactly what was asked of him.” *Id.* at 58:8–14.

Notably, the September 5, 2017 to January 29, 2018 range to which the registrar testified includes a four-day block of absences in September when the children were not yet attending Paramount Charter Academy. See 3/28/18 Hr’g Tr at 43:16–19. It also includes three days post-removal from Appellant-Father’s care. 1/24/18 Hr’g Tr at 57:13–20. In addition, Brianna’s five excused absences are not factored in to her calculated attendance rate. See 3/28/18 Hr’g Tr at 92:23.

Brian Jr. and Brianna’s parents’ rights were terminated on September 13, 2019 after they were unable to comply with the DHHS-recommended and court-ordered services. Far from being the help the Smith family needed—such as stable housing and assistance managing Appellant-Father’s chronic medical condition—the trial court imposed a stringent drug-testing schedule and counseling and assessment requirements, all of which were unrelated to the children’s school absences. The parents jointly appealed, but Appellant-Father challenged only the trial court’s exercise of jurisdiction.²⁴ With little discussion, the Court of Appeals affirmed. *Smith*, 2020 WL 2096136, at *2 (citing *In re Nash*, 165 Mich App 450, 455–456; 419 NW2d 1 (1987)). Judge Riordan dissented, noting there was “no evidence in the record of harm to the children or poor progress at school.” *Id.* at *5 (RIORDAN, J.). As he noted, missing some assessments and homework assignments “do[es] not amount to a preponderance of the evidence of educational neglect rising to the level of child abuse.” *Id.*

Appellant-Father timely applied to this Court for leave to appeal, and *Amici* submitted a brief in support of Appellant-Father’s request. On September 23, 2020, the Court granted oral argument on the application for leave, and ordered supplemental briefing to address three issues: “(1) whether a child’s chronic absence from school is, on its own, a sufficient basis for the trial court to assume jurisdiction on the ground of educational neglect as contemplated by MCL 712A.2(b)(2); (2) whether proving allegations of educational neglect requires demonstrating that the child has suffered harm, see MCL 712A.2(b)(1)(b), and, if so, what constitutes harm for these purposes; and (3) whether the trial court clearly erred when it exercised jurisdiction over the

²⁴ Appellant-Mother is not a party to the present appeal.

minor children solely on the basis of educational neglect pursuant to MCL 712A.2(b)(1).” (Order at 1.) In its September 23, 2020 order, this Court also invited *Amici* to file an amicus brief. (*Id.*)

IV. LEGAL STANDARD

This Court reviews the trial court’s findings of fact for clear error. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding is “clearly erroneous if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made.” *In re Riffe*, 147 Mich App 658, 671; 382 NW2d 842 (1985); *In re Cornet*, 422 Mich 274, 278; 373 NW2d 536 (1985). By contrast, interpretation and application of statutes and court rules are reviewed de novo. See, e.g., *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

V. ARGUMENT

The trial court clearly erred (and thus, committed reversible error) when it determined it had jurisdiction over Brian Jr. and Brianna. The court exercised jurisdiction solely on the basis of “educational neglect” without finding any evidence of harm to the children—academic, social, or emotional. In making an unwarranted presumption that absences alone result in harm, the court deprived Appellant-Father of the procedural safeguards of the adjudicative proceeding,²⁵ which are specifically designed to protect Michigan parents’ constitutional rights.

²⁵ The adjudication phase of a child welfare proceeding occurs once the trial court authorizes the filing of a petition to exercise jurisdiction over a child. *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019). During the adjudication phase, the trial court determines whether it may properly exercise jurisdiction over a child under Section 712A.2(b) of the Probate Code. The petitioner must prove, and the court must find, by a preponderance of the evidence, that there is factual support to exercise jurisdiction under at least one of the statutory grounds for jurisdiction listed in Section 712A.2(b). *Sanders*, 495 Mich at 405. The adjudicative phase of the child welfare proceeding is of “critical importance” because adjudication ultimately divests a parent of his or her constitutional rights. *Ferranti*, 504 Mich at 16. Indeed, this Court has recognized that “due

The lower courts' rulings set a disconcerting precedent in light of Michigan's chronic absenteeism rates and school attendance issues associated with the ongoing COVID-19 pandemic. This Court should reverse the lower courts' decision and reaffirm that school absences alone do not constitute child neglect or abuse under Michigan law.

A. Response to Court's Question No. 1: A Child's Chronic Absence From School Does Not, on its Own, Constitute Harm Providing a Sufficient Basis for a Trial Court to Assume Jurisdiction on the Ground of Educational Neglect

The trial court presumed harm based on the Smith children's absentee rates, but neither Michigan law nor the Constitution permitted the court to make such a presumption, and in doing so, the trial court ultimately stripped Appellant-Father of his constitutional rights. See *Sanders*, 495 Mich at 422 ("The Constitution does not permit the state to presume rather than prove a parent's unfitness 'solely because it is more convenient to presume than to prove.'").

Amici do not suggest that school absences can never be considered in child welfare proceedings. But Michigan law requires a showing of actual *neglect*—not just the fact of school absences alone. This important distinction is illustrated by comparing the present case to *In re Newcomb*, unpublished decision *per curiam* of the Court of Appeals issued on May 2, 2000 (Docket No. 222115); 2000 WL 33421431. In *Newcomb*, the trial court maintained jurisdiction over appellant's child for more than a year and a half. *Id.* at *5. By the time of the termination hearing, the eight-year-old child had been required to repeat the first grade because she missed school so often during the prior academic year. *Id.* This evidence—the child's need to repeat first grade—justified the court's determination that the child had been neglected, *not* the fact of the absences alone. *Id.* Such evidence is utterly lacking in this case.

process requires a *specific adjudication of a parent's unfitness* before the state can infringe the constitutionally protected parent-child relationship." *Sanders*, 495 Mich at 539 (emphasis added).

The only evidence of record shows that Brian Jr. and Brianna were performing at the same level as their peers. The trial court's exercise of jurisdiction, based on a judicially-created presumption that slightly-below-average school attendance amounts to child abuse, was clear error and should be reversed.

1. *In re Nash did not establish that chronic absenteeism is proof of educational neglect or that a trial court can make such a presumption*

The Court of Appeals relied on *In re Nash*, 165 Mich App 450, 455–456; 419 NW2d 1 (1987), to affirm the trial court's presumption that school absences alone are sufficient evidence of neglect under MCR 712A.2(b). See *Smith*, 2020 WL 2096136 at *2. But *Nash* does not stand for the proposition that chronic absenteeism alone is enough to establish jurisdiction under MCL 712A.2(b). And in any event, *Nash* is distinguishable from this case.

In *Nash*, the trial court made the following findings of fact prior to assuming jurisdiction over the children:

- A Protective Services worker who visited appellant-mother noted that she appeared to be under the influence of narcotics and stated she was going to kill her child;
- Appellant-mother had a prior record with Protective Services and with the court on the basis of educational neglect;
- Appellant-mother was frequently absent from her home for weeks at a time, had a history of drug abuse, and had been hospitalized several times for drug rehabilitation;
- A report of actual or suspected child abuse had been filed indicating that appellant-mother's child had tremors and poor feeding due to suspected drug withdrawal;
- Appellant-mother did not have an appropriate plan for her child and was not sure where she would live, as she had no home of her own; and
- Appellant-mother had a history of psychiatric problems and had been hospitalized several times for psychiatric care.

Nash, 165 Mich App at 453–454.²⁶ On appeal, the *Nash* court held that the trial court’s exercise of jurisdiction was “established well beyond a preponderance of the evidence,” based on *all* of these factors, stating that “[e]ach of the findings of fact set forth above is strongly supported by the evidence.” *Id.* at 454 (emphasis added).

The *Nash* Court simply never considered—much less decided—whether chronic absenteeism *alone* is evidence of educational neglect. In addition to evidence of school absence, the trial court in *Nash* considered evidence that appellant-mother was abusive, often absent, and frequently under the influence of drugs and alcohol. *Id.* at 453–454. That entire record supported a finding of neglect and the assumption of jurisdiction. *Id.*

Here, unlike in *Nash*, the trial court *rejected* petitioner’s allegations of domestic violence, substance abuse, drug dealing, and various other issues. 3/28/18 Hr’g Tr at 91:17–18; 91:23; 92:1–10. Instead, it assumed jurisdiction based solely on the children’s school absences. See *Smith*, 2020 WL 2096136 at *4 (RIORDAN, J., dissenting). Even under *Nash*, this was not enough to establish jurisdiction.²⁷

²⁶ The *Nash* court also recounted the circumstances of appellant-mother’s *prior* encounter with the probate court, during which the court took temporary custody over her three children because they had missed 46.5, 47, and 106 days of school during the 1980–1981 school year, respectively. *Nash*, 165 Mich App at 455–456. The court did not elaborate as to whether that probate court had found evidence of harm to the children because of their absences, but it did observe that in addition to the absences, the probate court considered appellant-mother’s testimony that “she ‘couldn’t even count’ the number of times she had been in the hospital during the past year for unspecified illnesses” and that “she would take what she characterized as ‘pain stuff’ and ‘nerve pills.’” *Id.* at 456. Unlike here, the appellant-mother’s “prior record with Protective Services” did not begin on the basis of her children’s school absences *alone*.

²⁷ *Amici* are aware that *In re Pomeroy*, unpublished decision *per curiam* of the Court of Appeals issued on Mar 10, 2000 (Docket No. 217536); 2000 WL 33522358, at *1, interpreted *Nash* in the same way as the Court of Appeals below and affirmed termination of parental rights solely on the basis of chronic school absence. *Amici* respectfully submit that the Court of Appeals’ unpublished decision in *Pomeroy* was wrong. *Amici* ask this Court to clarify *Nash* and the standard for establishing educational neglect under MCL 712A.2(b) to prevent future erroneous interpretations of *Nash* and Michigan law.

2. *DHHS policy affirms that school absence, alone, is not actionable*

Michigan's DHHS policy manual, which governs Child Protective Services investigations, prohibits DHHS workers from initiating an investigation solely on the basis of school absences. See DHHS Children's Protective Services Manual, 712-6, at 19 ("A complaint in which the only allegation involves a child failing to attend school and/or alternate educational programming is *not sufficient basis for suspecting child neglect*, and is inappropriate for investigation by CPS staff.") (emphasis added). This state policy implicitly recognizes that, without evidence of harm, school absence is not proof of actionable neglect.

By exercising jurisdiction over Brian Jr. and Brianna, the trial court effectively overrode DHHS policy, which fully comports with the Legislature's decision that neglect means "harm." See MCL 722.602(1)(d). The state has decided that without evidence of harm to the child, child protective services are unnecessary. This Court should affirm that policy by reversing the Court of Appeals.

B. Response to Court's Question No. 2(a): Proving Allegations of Educational Neglect Requires Demonstrating that the Child has Suffered Harm

1. *Courts look beyond school absences when evaluating harm in child custody proceedings*

In child custody proceedings where educational neglect is at issue, Michigan courts evaluate parents' ability to provide proper education for their children. Michigan courts have looked for evidence of *harm* to children when probing allegations of educational neglect in this context. If such scrutiny occurs in child custody disputes, it should be standard in the child welfare context, where the consequences of finding educational neglect may be much more permanent and severe.

Before modifying a custody or parenting-time order, Michigan trial courts must find proper cause or a change in circumstances before proceeding to analyze whether modification is in the

child's best interests.²⁸ *Lieberman v Orr*, 319 Mich App 68, 81; 900 NW2d 130 (2017). Courts often assess whether a parent's ability to provide education to his or her children is proper cause to modify a custody order. In so doing, courts have looked for evidence of resultant harm to the child.

Just recently, in *Brown v Brown*, 2020 WL 1814308; — NW2d — (Mich Ct App Apr 9, 2020), the Court of Appeals affirmed a finding of proper cause to modify a custody order where the appellant-father had neglected his children's educational needs. In *Brown*, the father enrolled his children in an unaccredited, church-based school which required the children to teach themselves. *Id.* at *5. His first two children to reach the age of 18 dropped out without completing the program, and a younger sibling was seriously behind in several core subjects. *Id.* And even if they had completed the program, they would not have received a legally valid diploma. *Id.* This record evidence of *harm* to the children—as a result of the appellant-father's neglect—was enough to initiate the trial court's best interest analysis.

Unlike the custody dispute in *Brown*, child welfare proceedings have the potential to permanently alter the legal relationship between parents and their children. Child welfare proceedings implicate parents' fundamental liberty interest in the care, custody, and control of their children, *In re Brock*, 442 Mich 101, 109; 499 NW2d 752, 756 (1993); *Santosky v Kramer*, 455 US 745, 753–754 (1982), whereas “a custody decree does not sever the parental bond and is

²⁸ The party moving to revisit a custody order must prove “by a preponderance of the evidence the existence of an appropriate ground for legal action . . . relevant to at least one of the twelve statutory best interest factors, and must be of such magnitude to have a significant effect on the child's well-being.” *Vodvarka v Grasmeyer*, 259 Mich App 499, 512, 675 NW2d 847 (2003). The best interest factors set forth in MCL 722.23 include “[t]he capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any” and “[t]he home, school, and community record of the child.” MCL 722.23(b), (h).

subject to modification.” *Hilliard v Schmidt*, 231 Mich App 316, 319; 586 NW2d 263 (1998). This Court should ensure that protections afforded to parents in child welfare proceedings are at least the same as, if not more robust than, safeguards afforded to parents under the Child Custody Act.

2. *Other States’ Case Law Confirms That School Absences Alone Should Not Establish Educational Neglect*

To aid the Court’s review of the Court of Appeals’ decision, *Amici* surveyed case law from other states relating to findings of educational neglect in child welfare proceedings. In general, other state courts require evidence of harm before finding educational neglect in these types of proceedings. This Court should affirm that Michigan law requires such evidence as well.

New York courts evaluate allegations of educational neglect by considering whether a child has been impaired as a result of school absences. See *In re Comm’r of Soc Servs ex rel Leslie C*, 161 Misc 2d 600 (NY Fam Ct 1994); *In re Benjamin K*, 28 AD3d 810, 811 (NY App Ct 3d Dep’t 2006). In *Matter of Jennifer N*, 173 AD2d 971 (NY App Ct 3d Dep’t 1991), a lower court found neglect on the grounds that appellant-mother kept her child out of school for nine days of the month. *Id.* at 971. The appellate court reversed, noting there was “absolutely no proof that any unexcused absences had any adverse impact upon the child’s education,” and there was “no demonstration of impairment . . .” *Id.* at 972 (citations omitted). “Accordingly, [the] petitioner failed to meet its burden of establishing the elements of educational neglect.” *Id.*

Likewise, in *Matter of Shelley Renea K*, 79 AD2d 1073 (NY App Ct 3d Dep’t 1981), the appellate court reversed a finding of educational neglect on the grounds that appellant-mother’s daughter had been absent from school thirteen times from November through June, had multiple tardies, and had appeared at school with dirty clothes and no shoes. The court observed:

There is absolutely no proof that the unexcused absences, either alone or coupled with the unexcused tardiness of respondent's daughter on other occasions, had any adverse impact upon the child's education. The child's classroom teacher during the period in issue did not testify, and no reports concerning the child's performance in the classroom were introduced; nor did the principal have any first hand knowledge of such performance. Accordingly, the conclusion that respondent has failed to exercise a minimum degree of care in supplying her daughter with education is speculative

(*Id.* at 1073) (emphasis added). So it is here. Without evidence that Brian Jr. and Brianna's absences had any adverse impact on their education, the trial court's conclusion that Appellant-Father neglected them was mere speculation.

Other states likewise look beyond school absences in deciding questions of parental neglect. In *In Interest of BB*, 440 NW2d 594 (Iowa 1989), the Supreme Court of Iowa addressed whether a mentally impaired child—who, during one school year, attended classes 9.5 days and was absent 170 days—was “in need of assistance” under Iowa law. But the court did not rely solely on this large number of absences in making its decision. Instead, it considered a psychologist's testimony that the child “was suffering educational, social, and emotional harm by being withheld from school.” *Id.* at 595. See also *Matter of JW*, 736 P2d 960, 962 (Mont 1987) (affirming declaration that child was a “youth in need of care” (resulting in the office of human services taking temporary custody over the child, not termination) where the child was absent for 73.5 days of the school year and the court found it “clear [that the child's] welfare is in danger due to the mother's emotional and mental condition”); *In re PB*, 54 A3d 660, 666 (DC 2012) (affirming finding of neglect where child missed so much school that he was in danger of failing).

In *Matter of Welfare of BAB*, 572 NW2d 776, 777 (Minn Ct App 1998), the Court of Appeals of Minnesota affirmed that a child was in need of protective services because she “lack[ed] necessary education.” The court emphasized that “regular school attendance is particularly critical for B.A.B. because of her academic problems,” *id.* at 779, and cited evidence

that the child “struggle[d] academically” and had been sent back a full grade level due to “poor academic performance.” *Id.* at 777. Despite all this evidence of actual harm, the lower court’s order had not even removed the child from her parent’s home. *Id.* at 779.

Even in *In re JC*, 264 Ga App 598, 600; 591 SE2d 475 (2003), in which the Georgia Court of Appeals rejected appellant-parents’ argument that the trial court should have made a finding of harm resulting from their children’s school absences before finding the children “deprived” under Georgia law, the court considered records of the children’s school absences over a four-year period and cited testimony that the children were “struggling with a few subjects” before affirming the lower court’s ruling. *Id.* at 476–478. The court also explicitly distinguished *JC*, an appeal from a finding of deprivation, from cases in which termination of parental rights is at stake. *Id.* at 477 (citing *In re AGI*, 246 Ga App 85, 87; 539 SE2d 584 (2000) (“A court may . . . terminate parental rights only where there is clear and convincing evidence of parental misconduct or inability . . . that . . . is likely to harm the child.”)).

This brief overview of other states’ laws confirms that school absences alone do not, and should not, amount to neglect under child welfare laws. The Court should reverse the lower courts’ decision and affirm that Michigan is not an outlier on this issue.

3. *Permitting Courts to Assume Jurisdiction Absent a Finding of Harm Could Have Far-Reaching and Negative Consequences for Michigan Families*

Under the standard adopted by the court below—that “[a] child’s chronic absence from school is a sufficient basis for the trial court to assume jurisdiction on the ground of educational neglect,” *Smith*, 2020 WL 2096136 at *2—tens of thousands of Michigan children are potentially within probate courts’ jurisdictional reach. As set forth in Section II, *supra*, roughly one in six Michigan students were chronically absent from school before the coronavirus pandemic. Judge Riordan correctly observed that Brian Jr. and Brianna’s chronic absenteeism is “reflective of the

educational condition of a great many school-age children.” *Id.* at *5 (RIORDAN, J., dissenting). Indeed, the 85% attendance rate at the Smith children’s school means that the average student there is chronically absent.

Amici are also concerned about disparate application of the Court of Appeals’ ruling based on a family’s wealth. Here, Brian Jr. and Brianna missed 21 and 22 days of school because their low-income family was struggling with the unexpected death of their sister, severe health issues and hospitalization, and homelessness. If a wealthy family takes its child on a protracted vacation abroad, with the child missing 21 days of school, would a trial court find that child neglected and assume jurisdiction over her? *Amici* respectfully submit that it would not—and it should not, without evidence that such absences led to educational neglect. Low-income families, with school absences unrelated to wealth or privilege, should be entitled to the same standards before state intervention.

The Court of Appeals’ ruling is increasingly troubling given the impact of the COVID-19 pandemic on school absenteeism rates, particularly in low-income communities in Michigan. Parents attempting to meet basic needs at home are struggling to provide a sufficient remote learning environment and resources for their kids.²⁹ In high-poverty schools, teachers reported that one-third of students are not “logging in,” a rate three times higher than that reported by teachers in wealthy districts.³⁰ The decision below begs obvious questions: Are students who do not “log in” chronically absent? Does a parent neglect his child by failing to provide a laptop and internet access for remote learning, especially if the parent’s failure is due to the family’s economic

²⁹ See generally Georgetown University Discovery and Impact, *COVID-19 Has Harmful Effects on Children in Low-Income Families, Researchers Find* (Aug. 31, 2020).

³⁰ Herold, *supra* note 15.

hardship? Without confirmation from this Court that under the controlling statute “neglect” means “harm,” such questions remain open-ended for courts and Michigan families alike. *Amici* are concerned that the Court of Appeals’ ruling in this case could be used to justify state involvement in many cases involving school absenteeism in the COVID-19 era where neglect is not otherwise present.

Michigan law requires the trial court find neglect by a preponderance of the evidence before exercising jurisdiction. During the pandemic and beyond, it is imperative to address the institutional causes of chronic absenteeism, including by strengthening and supporting Michigan families, rather than lowering the adjudicative threshold for termination.

C. Response to Court’s Question No. 2(b): The Court Should Evaluate “Harm” on a Case-by-Case Basis and Should Not Presume Harm Based Solely on School Absences

The Court should evaluate “harm” on a case-by-case basis and should not presume harm simply based on a child’s slightly higher-than-average school absence rate. The contrary approach by the trial court here neatly illustrates the problem: by presuming “harm,” the trial court ignored the record evidence that the children were *not*, in fact, harmed, and were instead progressing on an appropriate educational track. The wiser (from a policy perspective) and constitutionally sound approach is for trial courts to evaluate the facts of each child’s situation and consider, consider, based on the factual record, whether school absences are actually causing a detrimental effect on a child’s academic, emotional, social, or psychological progress relative to his or her peers.

D. Response to Court’s Question No. 3: The Trial Court Clearly Erred When it Exercised Jurisdiction Over the Minor Children Solely on the Basis of Educational Neglect With No Showing of Attendant Harm

In child protective proceedings, a trial court’s decision to exercise jurisdiction over the child is reviewed for clear error in light of the court’s factual findings. *In re Mason*, 486 Mich

142, 152 (2010). A decision is “clearly erroneous” if the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Long*, 326 Mich App 455, 460 (2018).

The trial court’s exercise of jurisdiction over the children in this case on no basis other than their school absences—and with no showing of harm to the children as a result—is such a mistake that mandates reversal by this Court. Not only did the trial court lack evidence that the children were harmed by their school absences, but the evidence plainly supports that the children were progressing at grade level. And regardless, the trial court’s adjudication over the minor children was reversible error.

1. There is No Evidence that the Children were Harmed by Their School Absences; Instead, the Record Establishes That They were Advancing Similar to Their Peers

As discussed above, “educational neglect” requires a showing of “harm” under Michigan law. MCL 712A.2(b)(1)(B) (incorporating MCL 722.602(1)(d)). But there is no record evidence that Brian Jr. or Brianna were harmed by their school absences.

With respect to Brian Jr., the record reflects that he was on grade level and otherwise performed on par with other children his age. 3/28/18 Hr’g Tr at 58:3, 60:25–61:1. Indeed, his first grade teacher testified that he was “at grade level” and, “as far as academics go[,] he was doing just fine.” *Id.* On cross-examination, she even confirmed that she had no evidence to show that he had fallen behind. *Id.* at 59:18–20. At most, Brian Jr.’s teacher had an “assumption” that his attendance could affect his academic progress, *Id.* at 59:21–23, but she did not produce any evidence in support of that theory. *Id.* at 59:21–25. The Court of Appeals summarized this evidence, recounting “[t]estimony at the adjudication trial indicat[ing] that [Brian Jr.] was performing at grade level, and there was no indication that he had fallen behind on his school work because of his absences.” *Smith*, 2020 WL 2096136 at *1.

As for Brianna, the trial court did not obtain any testimony about her educational performance before making a finding of neglect. The Court of Appeals correctly observed that “none of [Brianna’s] teachers testified” during the adjudication hearing. *Id.* at *1. The trial court did hear, however, that both she and her brother were “always in a good mood” and well-behaved in school. 3/28/18 Hr’g Tr at 45:9, 58:8–14.

The trial court wrote off the lack of evidence of harm to Brian Jr. and Brianna, stating “this is one of those cases that it is difficult to prove certain things.” *Id.* at 91:6–7. But the fact that neglect is “difficult to prove” does not permit a trial court to make a factual finding, by a preponderance of the evidence, that it has jurisdiction under MCL 712A.2(b) without sufficient evidence. Without relying on record evidence to establish neglect, it was all too easy for the court to speculate. This deprived Appellant-Father of an important presumption that he was acting in the best interests of his children. See *Sanders*, 495 Mich at 539.

Rather than make a factual finding that the children were, in fact, harmed, the court presumed that because they had below-average attendance rates during part of the 2017–2018 school year, they must have suffered harm rising to the level of neglect or abuse. See 3/28/18 Hr’g Tr at 92:13-17 (“[H]ere [it] is beyond a reasonable doubt in this court’s mind that you miss that much school and the parents don’t even come into school when given opportunities to correct that that is child abuse.”). The court had no authority to make such a presumption, and this flawed premise was the trial court’s sole basis for exercising jurisdiction over the children. The trial court clearly erred.

2. *The Trial Court’s Adjudication Was Reversible Error, Regardless of the Subsequent Dispositional Phase*

As set forth by this Court in *In re Ferranti*, 504 Mich 1, 15; 934 NW2d 610 (2019), the adjudicative phase of a child welfare proceeding is critically important because “the procedures

used in adjudicative hearings protect the parents from the risk of erroneous deprivation of their parental rights.” 504 Mich at 15 (citation omitted). The adjudication *itself* “divests the parent of her constitutional right to parent her child and gives the state that authority instead.” *Id.* When a trial court erodes the safeguards designed to protect parents during this first phase of termination proceedings, it wears away critical due process. See, e.g., *In re Wangler*, 498 Mich 911, 911; 870 NW2d 923 (2015) (finding that the manner in which a trial court assumed jurisdiction violated appellant-mother’s right to due process).

For this reason, Michigan’s appellate courts have considered challenges to orders of termination on grounds that the trial court improperly assumed jurisdiction, regardless of whether there was clear and convincing evidence to justify termination in the dispositional phase of the proceeding. See *Ferranti*, 504 Mich at 25–26 (citing *Sanders*, 495 Mich 394 (reversing a termination in which one parent was improperly adjudicated as unfit and holding that the one-parent doctrine is unconstitutional); *In re Mays*, 490 Mich 993; 807 NW2d 307 (2012) (reversing a termination after the trial court made an erroneous factual finding during the adjudication phase)).³¹

Here, after the trial court adjudicated Brian Jr. and Brianna based solely on their absences from school, it imposed myriad services requirements on Appellant-Father—many of which were

³¹ See also *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010) (reversing a termination based on the failure to facilitate the respondent’s involvement and participation during the adjudication and dispositional phases); *In re Hudson*, 483 Mich 928; 763 NW2d 618 (remanding when the trial court failed to advise the respondent that her plea could be used to terminate her parental rights); *In re Mitchell*, 485 Mich 922; 773 NW2d 663 (2009) (same); *In re Jones*, 499 Mich 862; 874 NW2d 129 (2016) (reversing a parental termination order after the Court of Appeals held that the respondent’s claims were barred by *Hatcher*); *Wangler*, 498 Mich at 911 (same).

unrelated to the alleged “educational neglect.”³² He fought an uphill battle to comply. Not only had his twenty-two-year old daughter just died, he was hospitalized several times due to a severe gastrointestinal disorder and battled homelessness. 1/24/18 Hr’g Tr at 43:21–44:3; 3/28/18 Hr’g Tr at 97:12–21; 8/8/19 Hr’g Tr at 4:9–15. Still, Appellant-Father managed to obtain disability benefits and work toward finding a house for his family in an effort to stay connected to his children. 8/30/18 Hr’g Tr at 4:17–20, 8:5–7, 17:22–18:6; 11/27/18 Hr’g Tr at 5:20–21. Nonetheless, the court terminated his parental rights after he failed to fully comply with the service requirements that never should have been imposed on him in the first place.

This case is a perfect example of the principle set forth by this Court in *Ferranti*. The trial court’s failure to properly adjudicate Brian Jr. and Brianna under MCL 712A.2(b)(1) divested Appellant-Father of his constitutional right to parent. That error was not corrected by the court’s subsequent termination of his parental rights and warrants reversal in this case.

VI. CONCLUSION

For all of the foregoing reasons, *Amici* respectfully request that this Court find the lower court lacked jurisdiction under MCL 712A.2(b) and reverse the trial court’s order terminating Appellant-Father’s parental rights.

Respectfully submitted,

/s/ Sarah E. Waidelich

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³² For example, the trial court required Appellant-Father to participate in a psychological assessment, drug screens, domestic violence counseling and parenting classes. It also mandated that he obtain adequate housing and maintain an income. See generally 4/23/18 Hr’g Tr.

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Dated: December 16, 2020

IN THE MICHIGAN SUPREME COURT
Appeal from the Michigan Court of Appeals
RIORDAN, P.J., and FORT HOOD and SWARTZLE, JJ.

In re Smith Minors

Supreme Court No. 161525
 Court of Appeals No. 351095
 Kalamazoo Circuit Court; Family Division
 LC No. 18-000053-NA

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PROOF OF SERVICE

I hereby certify that on December 16, 2020, I electronically filed the foregoing document, along with the Certificate of Service, using the TrueFiling System which will send notification of such filing to all registered counsel of record.

/s/ Sarah E. Waidelich_____

Dated: December 16, 2020

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**AMICI CURIAE BRIEF OF THE LEGAL SERVICES ASSOCIATION OF MICHIGAN
AND MICHIGAN STATE PLANNING BODY FOR LEGAL SERVICES**

APPENDIX EXHIBITS

EXHIBITS 1-30; APPX 1-278

Exhibit	Date	Description	App. Pages
1	05/2012	Robert Balfanz and Vaughan Byrnes, <i>The Importance of Being in School: A Report on Absenteeism in the Nation's Public Schools</i> , Johns Hopkins University Center for Social Organization of Schools (May 2012)	1-44
2	Updated Fall 2019	Center for Education Performance and Information (CEPI), <i>Michigan Department of Education: MI School Data, Student Counts</i> , https://www.mischooldata.org/DistrictSchoolProfiles2/StudentInformation/StudentCounts/Attendance2.aspx	45-47
3	06/07/2016	U.S. Department of Education, <i>Chronic Absenteeism in the Nation's Schools: An Unprecedented Look at a Hidden Crisis</i> (June 7, 2016) (ed. Oct. 27, 2016, updated Jan. 2019), https://www2.ed.gov/datastory/chronicabsenteeism.html	48-57
4	11/2018	Jennifer Erb-Downward and Payton Watt, <i>Missing School, Missing a Home: The Link between Chronic Absenteeism, Economic Instability and Homelessness in Michigan</i> (Nov. 2018), https://poverty.umich.edu/data-tools/chronic-absenteeism-of-homeless-children-in-michigan/	58-63
5	2019	Sarah Winchell Lenhoff <i>et al.</i> , <i>Chronic Absenteeism and Student Attendance</i> (2019), https://education.wayne.edu/detroit-education-research-partnership/student-attendance	64-73
6	09/25/2018	Emma García and Elaine Weiss, <i>Student absenteeism: Who misses school and how missing school matters for performance</i> , Economic Policy Institute (Sept. 25, 2018)	74-107
7	04/02/2020	Malachi Barrett, <i>Whitmer orders all Michigan schools to remain closed through academic year as coronavirus cases surge</i> , MLive (Apr. 2, 2020), https://www.mlive.com/public-interest/2020/04/whitmer-orders-all-michigan-schools-to-remain-closed-through-academic-year-as-coronavirus-cases-surge.html	108-111
8	04/02/2020	Executive Order 2020-35 (COVID-19)	112-128
9	12/07/2020	Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order	129-137
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11	11/20/2020	Koby Levin, <i>Report: Michigan's most vulnerable students have limited learning options during the pandemic</i> , Bridge Michigan (Nov. 20, 2020)	140-147
12	04/10/2020	Benjamin Herold, <i>Disparities in Remote Learning Under Coronavirus (in Charts)</i> , Education Week (Apr. 10, 2020)	148-157
13	10/20/2020	Eleanore Catolico, <i>Detroit Superintendent Wants More Face-To-Face Learning To Encourage Attendance</i> , Chalkbeat (Oct. 20, 2020)	158-169
14	05/05/2020	Press Release, <i>Commissioner Starks and U.S. Representative Brenda Lawrence (MI-14) Announce Connecting Michigan: From Internet Inequality to Digital Equity</i> (May 5, 2020), https://docs.fcc.gov/public/attachments/DOC-364162A1.pdf	170-171

15	09/29/2020	Nushrat Rahman, <i>Back to school puts financial strain on Michigan's most vulnerable families</i> , Detroit Free Press (Sept. 29, 2020)	172-176
16	07/29/2020	Wade Tyler Millward, <i>Districts Pivot Their Strategies to Reduce Chronic Absenteeism During Distance Learning</i> , EdSurge (Jul. 29, 2020)	177-184
17	09/24/2020	Anya Kamenetz, <i>School Attendance In The COVID Era: What Counts As 'Present'?</i> , NPR (Sept. 24, 2020).	185-201
18	05/02/2000	<i>In re Newcomb</i> , unpublished <i>per curiam</i> opinion of the Court of Appeals, issued May 2, 2000	202-207
19	12/01/2017	DHHS Children's Protective Services Manual 712-6	208-229
20	03/10/2000	<i>In re Pomeroy</i> , unpublished <i>per curiam</i> opinion of the Court of Appeals, issued Mar 10, 2000	230-232
21	04/29/1994	<i>In re Comm'r of Soc Servs ex rel Leslie C.</i> , 161 Misc 2d 600 (NY Fam Ct 1994)	233-240
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23	05/09/1991	<i>Matter of Jennifer N.</i> , 173 AD2d 971 (NY App Ct 3d Dep't 1991)	243-244
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26	05/11/1987	<i>Matter of JW</i> , 736 P2d 960 (Mont 1987)	252-257
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28	01/13/1998	<i>Matter of Welfare of BAB</i> , 572 NW2d 776 (Minn Ct App 1998)	267-270
29	12/08/2003	<i>In re JC</i> , 264 Ga App 598; 591 SE2d 475 (2003)	271-274
30	08/31/2020	Georgetown University Discovery and Impact, <i>COVID-19 Has Harmful Effects on Children in Low-Income Families, Researchers Find</i> (Aug. 31, 2020)	275-278

EXHIBIT 1

The Importance of Being in School:

A Report on Absenteeism in the Nation's Public Schools

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May 2012

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Balfanz, R., & Byrnes, V. (2012). *Chronic Absenteeism: Summarizing What We Know From Nationally Available Data*. Baltimore: Johns Hopkins University Center for Social Organization of Schools.

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Executive Summary

America's education system is based on the assumption that barring illness or an extraordinary event, students are in class every weekday. So strong is this assumption that it is not even measured. Indeed, it is the rare state education department, school district or principal that can tell you how many students have missed 10 percent or more of the school year or in the previous year missed a month or more school – two common definitions of chronic absence.

Because it is not measured, chronic absenteeism is not acted upon. Like bacteria in a hospital, chronic absenteeism can wreak havoc long before it is discovered. If the evidence in this report is borne out through more systematic data collection and analysis, that havoc may have already undermined school reform efforts of the past quarter century and negated the positive impact of future efforts.

Students need to attend school daily to succeed. The good news of this report is that being in school leads to succeeding in school. Achievement, especially in math, is very sensitive to attendance, and absence of even two weeks during one school year matters. Attendance also strongly affects standardized test scores and graduation and dropout rates. Educators and policymakers cannot truly understand achievement gaps or efforts to close them without considering chronic absenteeism.

Chronic absenteeism is not the same as truancy or average daily attendance – the attendance rate schools use for state report cards and federal accountability. Chronic absenteeism means missing 10 percent of a school year for any reason. A school can have average daily attendance of 90 percent and still have 40 percent of its students chronically absent, because on different days, different students make up that 90 percent.

Data from only six states address this issue: Georgia, Florida, Maryland, Nebraska, Oregon and Rhode Island. How these states measure chronic absenteeism, however, differs by number of days and by whether or not data include transfer students.

Such limited data produce only an educated guess at the size of the nation's attendance challenge: A national rate of 10 percent chronic absenteeism seems conservative and it could be as high as 15 percent, meaning that 5 million to 7.5 million students are chronically absent. Looking at this more closely sharpens the impact. In Maryland, for instance, there are 58 elementary schools that have 50 or more chronically absent students; that is, two classrooms of students who miss more than a month of school a year. In a high school, where chronic absenteeism is higher, there are 61 schools where 250 or more students are missing a month or more of school.

The six states reported chronic absentee rates from 6 percent to 23 percent, with high poverty urban areas reporting up to one-third of students chronically absent. In poor rural areas, one in four students can miss at least a month's worth of school. The negative impact chronic absenteeism has on school success is increased because students who are chronically absent in one year are often chronically absent in multiple years. As a result, particularly in high poverty areas, significant numbers of students are missing amounts of school that are staggering: on the order of six months to over a year, over a five year period.

Chronic absenteeism is most prevalent among low-income students. Gender and ethnic background do not appear to play a role in this. The youngest and the oldest students tend to have the highest rates of chronic absenteeism, with students attending most regularly in third through fifth grades. Chronic absenteeism begins to rise in middle school and continues climbing through 12th grade, with seniors often having the highest rate of all. The data also suggest that chronic absenteeism is concentrated in relatively few schools, with 15 percent of schools in Florida, for example, accounting for at least half of all chronically absent students.

Missing school matters:

- In a nationally representative data set, chronic absence in kindergarten was associated with lower academic performance in first grade. The impact is twice as great for students from low-income families.
- A Baltimore study found a strong relationship between sixth-grade attendance and the percentage of students graduating on time or within a year of their expected high school graduation.
- Chronic absenteeism increases achievement gaps at the elementary, middle, and high school levels.
- Because students reared in poverty benefit the most from being in school, one of the most effective strategies for providing pathways out of poverty is to do what it takes to get these students in school every day. This alone, even without improvements in the American education system, will drive up achievement, high school graduation, and college attainment rates.

Students miss school for many reasons. These can, however, be divided into three broad categories:

- Students who *cannot attend* school due to illness, family responsibilities, housing instability, the need to work or involvement with the juvenile justice system.
- Students who *will not attend* school to avoid bullying, unsafe conditions, harassment and embarrassment.

- Students who *do not attend* school because they, or their parents, do not see the value in being there, they have something else they would rather do, or nothing stops them from skipping school.

Despite being pervasive, though overlooked, chronic absenteeism is raising flags in some schools and communities. This awareness is leading to attendance campaigns that are so vigorous and comprehensive they pay off quickly. Examples of progress nationally and at state, district, and school levels give hope to the challenge of chronic absenteeism, besides being models for others.

In addition to these efforts, both the federal government, state departments of education, and school districts need to regularly measure and report the rates of chronic absenteeism and regular attendance (missing five days or less a year) for every school. State and district policies need to encourage every student to attend school every day and support school districts, schools, non-profits, communities, and parents in using evidence-based strategies to act upon these data to propel all students to attend school daily. Mayors and governors have critical roles to play in leading inter-agency task forces that bring health, housing, justice, transportation, and education agencies together to organize coordinated efforts to help every student attend every day.

Introduction

The public education system is based on the assumption that students regularly attend school. Compulsory education laws back up this assumption. The standards and accountability movement of the past 25 years represent an on-going attempt to make every day of school matter. The assumption that except for illness or the occasional doctor's appointment, family vacation, special event or crisis, students do in fact attend school every day is so strong, that it is not measured. It is the rare state department of education, school district or school principal that can tell you how many students have missed 10 percent or more of the school year or in the prior year missed a month or more of school -- two common definitions of chronic absence. Parents and community members can readily learn the test scores of their local schools and their average daily attendance from school report cards that are routinely available on state and district websites, but they cannot readily know if, as is the case in some schools, a quarter or more of the students in the school are not attending regularly.

Because it is not measured, chronic absenteeism is not acted upon. This is deeply problematic. As this report will highlight, chronic absenteeism functions much like bacteria in a hospital -- an unseen force that wreaks havoc on efforts to improve life outcomes. In fact, if the fragmentary evidence that this report assembles is verified through more systematic data collection and analysis, the failure to measure and act upon chronic absenteeism will be seen as a fundamental reason why the school reform efforts of the past quarter century have not been as effective as intended. By the same token, it will be realized that if chronic absenteeism is not addressed it will continue to under-cut the impact of current and future school improvement efforts in an era when the nation, its communities, and citizens are dependent more than ever on increasing educational attainment and achievement.

Simply put, students need to attend school regularly to succeed. The good news of this report is that being in school leads to succeeding in school. This may seem obvious, but the steady drumbeat about under-performing schools and the failures of the public education system can lead people to believe that missing some school days won't matter that much. But the emerging evidence argues the opposite.

Chronic absenteeism is most prevalent among low-income students, and it is low-income students who benefit the most from being in school every day. This indicates that one of the most effective strategies for providing pathways out of poverty is to do what it takes to get students who live in high-poverty neighborhoods to attend school every day, and that this alone, even without any additional qualitative improvements in the American education system, will drive up achievement, high school graduation, and college attainment rates and through them economic productivity and social progress.

What the emerging evidence tells us is that in some states like Oregon and Rhode Island, close to 1 in 5 students does not attend school regularly and misses essentially a month or more of schooling in a year. In some high-poverty school districts this can climb to more than 1 in 3 students. There are even high schools where 75 percent of the students do not attend regularly. Even states where the percentage is considerably lower, such as Nebraska where 6 percent of students miss 21 or more days of school, the absolute numbers of students missing lots of school in a year are still considerable. In Nebraska, that number is 18,100. Moreover, the available data indicate that while chronic absenteeism is deeply detrimental to educational success, just missing more than a week of school can have consequences. In this regard, there is widespread room for improvement. In Georgia, for example, only 53 percent of students miss five or fewer days of school, in Maryland 38 percent of students miss less than five days of school.

The goal of this report is to gather and analyze all available data on chronic absenteeism at the state level to begin the process of mapping its extent and characteristics, to synthesize existing work on the consequences of missing school, to extend that work with new analysis at state and national levels, and highlight some promising practices among cities, school districts and non-profits to combat chronic absenteeism.

This report concludes with a set of policy recommendations, including that it is imperative for both the federal government and state departments of education to regularly measure and report the rates of chronic absenteeism (missing 10 percent or more of school or a month or more per year) and regular attendance (missing 5 or fewer days per year) for every school, to engage in policy reviews to ensure that current state and district policies encourage every student to attend every day, and to work with and support school districts, schools, non-profits, the community and parents in using evidence-based strategies to act upon these data, to propel all the nation's students to attend school on a regular basis.

What is Chronic Absenteeism?

Although there is no standard definition, chronic absenteeism is typically based on total days of school missed, including both excused and unexcused absences. This is critical because the evidence indicates that it is how many days a student misses that matters, not why they miss them. In other words, the detrimental impacts of missing school occur if a student misses because of illness, suspension, the need to care for a family member, or any other reason.

In this regard, chronic absenteeism is not the same as truancy. Truancy is typically defined as a certain number or certain frequency of unexcused absences. Truancy numbers typically underestimate total absenteeism.

Chronic absenteeism is often defined as missing 10 percent or more of school days. In practical terms this translates into 18 days a year. Several states define chronic absenteeism as missing more than 20 days, or a month, of school. Some states set the bar at 15 days. In a number of locales, missing 20 percent or more of school, 40 or more days, is defined as severely or excessively chronically absent.

Chronic Absenteeism is Not Routinely Measured and Reported

The federal government neither requires nor asks states or school districts to report chronic absenteeism. As part of the No Child Left Behind re-authorization of the Elementary and Secondary Education Act (ESEA), most states choose to report the average daily attendance of elementary and middle schools, as the second required accountability measure, along with achievement tests in mathematics and English in grades 3 to 8. Average daily attendance, however, masks more than it reveals.

This is one of the rare instances when 90% is not a good grade. It is possible for a school to have 90 percent average daily attendance and still have as many as 40 percent of its students chronically absent because on different days different students are in school. Chronic absenteeism typically has not been included as a common variable in the various federal student and school surveys. For example, the U.S. Department of Education Office of Civil Rights school survey examines discipline, access to advanced courses, and other key metrics of educational opportunity, but not the extent to which absenteeism varies by race, ethnicity and family income.

Few states report on chronic absenteeism. A comprehensive search undertaken for this report found chronic absenteeism data for only six states – Georgia, Florida, Maryland, Nebraska, Oregon and Rhode Island -- with only four of them making school level data accessible on state websites -- Maryland, Georgia, Florida, and Rhode Island. Moreover, several states, including California and New York, do not even collect the underlying individual attendance data needed to calculate chronic absenteeism.

Chronic absenteeism was not included in the initial set of data elements promoted by the Data Quality Campaign and, as a result, is not a readily accessible variable built into a number of emerging state longitudinal data systems. Nor has it, by and large, been built into the next generation of accountability and reporting systems that states are seeking to implement via flexibility waivers from ESEA.

On the positive side, because chronic absenteeism has been identified as a key early warning indicator of students likely to drop out of high school, it is included in the growing number of statewide early warning systems. In most cases, however, these systems and their data are made available to districts, but not mandated, nor always aggregated at the school level. As a result, the extent to which they will make school data on chronic absenteeism available is uncertain.

At the school district level, measuring and reacting to chronic absenteeism have recently been driven by mayors and school superintendents working together. Mayoral interest has helped galvanize inter-agency responses to chronic absenteeism, but has not reached the critical mass needed to propel policy changes at the state and federal levels to ensure that absenteeism is routinely measured, reported, and acted upon by all schools.

How Prevalent is Chronic Absenteeism?

Because it is not routinely measured, we do not know how prevalent chronic absenteeism is. From available data, however, we can begin to paint a picture of its extent, how it varies across schools, and how much students who are chronically absent for multiple years cumulatively miss. What these data tell us is that significant percentages and large numbers of students, particularly in high-poverty schools, are missing lots of school.

Overall, we found some data on chronic absenteeism from six states. The states, however, do not measure chronic absenteeism in the same way. Oregon and Rhode Island measure how many students miss 10 percent or more of enrolled school days. In a 180-day school year, this means students would be counted as chronically absent if they missed 18 or more days.

Maryland, Florida, and Nebraska report the number and percentage of students who miss 21 or more days of school (roughly speaking more than a month of school). Maryland and Florida restrict their counts to students who were enrolled for the full school year, while Rhode Island counts any student enrolled for at least 90 days. Georgia and Nebraska report the number of students who miss 15 days or more of school. Georgia and Maryland are the only states that also provide data on the number and percent of students with good attendance, those who miss five or fewer days in Georgia, and fewer than five days in Maryland.

The data on state absenteeism rates reported in Tables 1 and 2 tell us several things.

First, lots of students are missing lots of school. Even in the state with the lowest reported rate we found, Nebraska at 6 percent, 18,000 students a year are missing more than a month of school. Florida's reported rate of 10 percent translates into more than 300,000 students a year missing more than a month. In Oregon and Rhode Island, where the bar for chronic absenteeism is set a little lower (missing 10 percent of school, or 18 out of 180 days), nearly 1 in 5 students is not attending school regularly. In Georgia 164,000 students are missing more than three weeks of school, and in Nebraska, when the bar is dropped from 21 to 16 or more days, the number of students with poor attendance doubles from 6,000 (6%) to 12,000 (12%).

Table 1 - Chronic Absenteeism Rates in Five States

State	Percent Chronically Absent	Number Chronically Absent
Oregon	23% (2009-10)*	129,190
Rhode Island	18% (2010-11)**	30,168
Maryland	11% (2010-11)***	85,188
Florida	10% (2009-10)***	302,382
Nebraska	6% (2010-11)***	18,100

*Missing 10% or more of enrolled school days ** Missing 10% of enrolled school days, for those who attended at least 90 days ***Students absent 21 or more days-of those enrolled all year

Table 2 - Percent and Number of Students Missing More Than 15 Days of School

State	Percent of Students missing more than 15 days	Number of Students missing more than 15 days
Georgia	8.8% (2010-11)	164,000
Nebraska	12.2% (2010-11)	35,121

State data combine school districts and schools with lower and higher rates of chronic absenteeism. To get a sense of how the magnitude of chronic absenteeism varies by location, it is illustrative to look at school districts. Table 3 below highlights, for example, the school district in Florida with the highest reported rate of chronic absenteeism. In Taylor County, more than a quarter of the students are missing more than a month of school and it is a rural district, demonstrating that chronic absenteeism is not just an urban issue.

Table 3 also reports data from three high-poverty, urban school districts -- Baltimore, New York City, and Providence. Here we can see that depending on how it is measured – that is, students missing 21, 20 days or 18 days, respectively -- that between one-fifth and one-third of students are not attending school regularly. Table 3 also begins to highlight the sheer magnitude of the challenge some school districts face. In Taylor County, Fla., more than 1,000 students miss more than a month of school. This is a considerable challenge when you consider the size and infrastructure typically available to rural counties with lower wealth. In New York City, the largest urban district, there are 200,000 students to respond to.

Table 3 - Chronic Absenteeism Rates in Selected School Districts

City/County	Chronic Absenteeism Rate	Number
Taylor County Florida	28.8% (2009-10)	1,017
Baltimore	25% (2010-11)	17,796
New York City	20% (2010-11)	200,000
Providence	34% (2010-11)	8,000

Dropping down to the school level brings into clear view the potentially overwhelming number of students who are chronically absent in the most affected schools. Table 4 examines the 10 percent of schools with the highest chronic absenteeism rates in Rhode Island and Maryland at the elementary, middle and high school levels. We observe that in the most affected elementary schools, between a quarter and a third of the students, on average, are not attending regularly. In Rhode Island, there are 18 elementary schools where more than a quarter of the students are missing at least 10 percent of school. In Maryland we find 39 middle schools where at least one-quarter of the students are missing more than a month of school. In high schools, the numbers are astounding. Here the norm is for more than one-half to two-thirds of the students in the most impacted schools to be chronically absent. In Maryland there are 28 high schools where half or more of the students are chronically absent.

Table 4 – Chronic Absenteeism Rates in Most Impacted Schools (Top 10%) by School Level in Maryland and Rhode Island 2010-11

School Level/ State	Average	Max	Min	N
Elementary				
Rhode Island	32%	46%	26%	18
Maryland	24%	69%	16%	93
Middle School				
Rhode Island	36%	40%	31%	6
Maryland	41%	90%	25%	39
High School				
Rhode Island	57%	64%	51%	5
Maryland	67%	95%	50%	28

Table 5 takes the analysis one step further, using Maryland as a case study to examine the scope and magnitude of the challenge as experienced by schools. It asks how many schools have large numbers of students who are chronically absent? In Maryland, at the elementary level there are 58 schools that have 50 or more chronically absent students, and the elementary school with the largest number of students has 137 students not attending school regularly. In the middle grades, there are 26 schools with 100 or more chronically absent students spread over eight school districts. The middle school with the most absentees has 152. Among high schools, the school with the greatest challenge has an astounding 807 chronically absent students. Eleven other high schools have 500 or more students who miss more than 20 days of school; 61 schools have 250 or more of these students, and 161 high schools throughout the state have 100 or more students not attending school regularly.

Think of it this way. In the most affected elementary schools there are two full classes (25 students each) of chronically absent students. In the most impacted middle schools there are four classrooms of chronically absent students and in high schools there are an astounding 10 to 20 classrooms.

Table 5 - Number of Schools with Large Numbers of Students Chronically Absent-Maryland 2010-2011

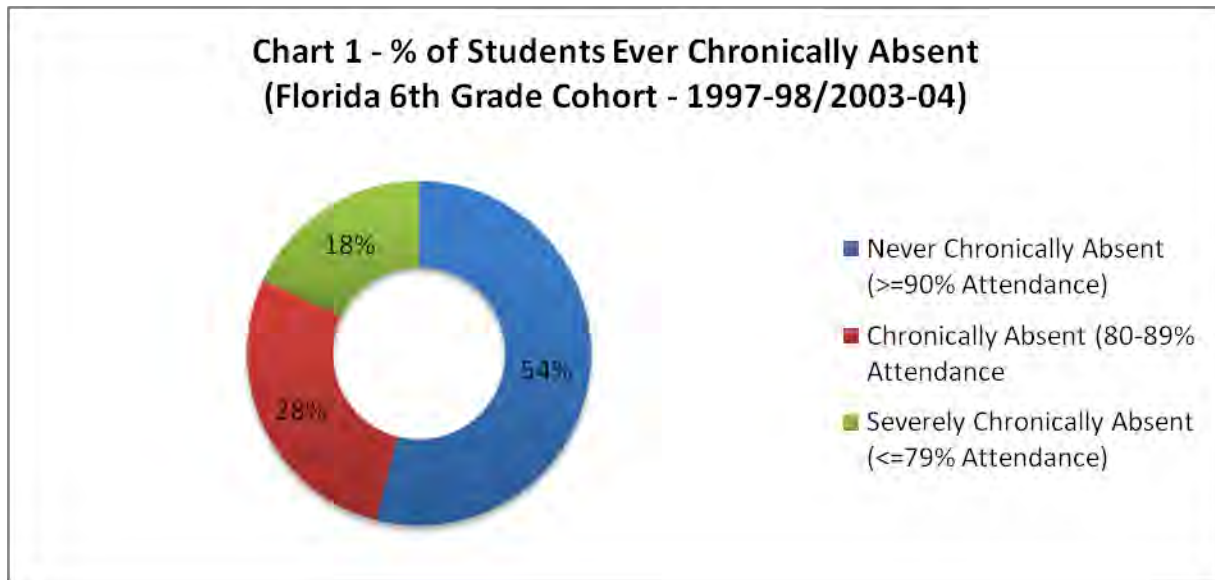
Chronically Absent Students	50 or more	100 or more	500 or more	Greatest Number
Elementary	58	3	NA	137
Middle School		26	NA	152
	100 or more	250 or more	500 or more	Greatest Number
High School	161	61	12	807

Significant Number of Students Miss Truly Extraordinary Amounts of Schooling

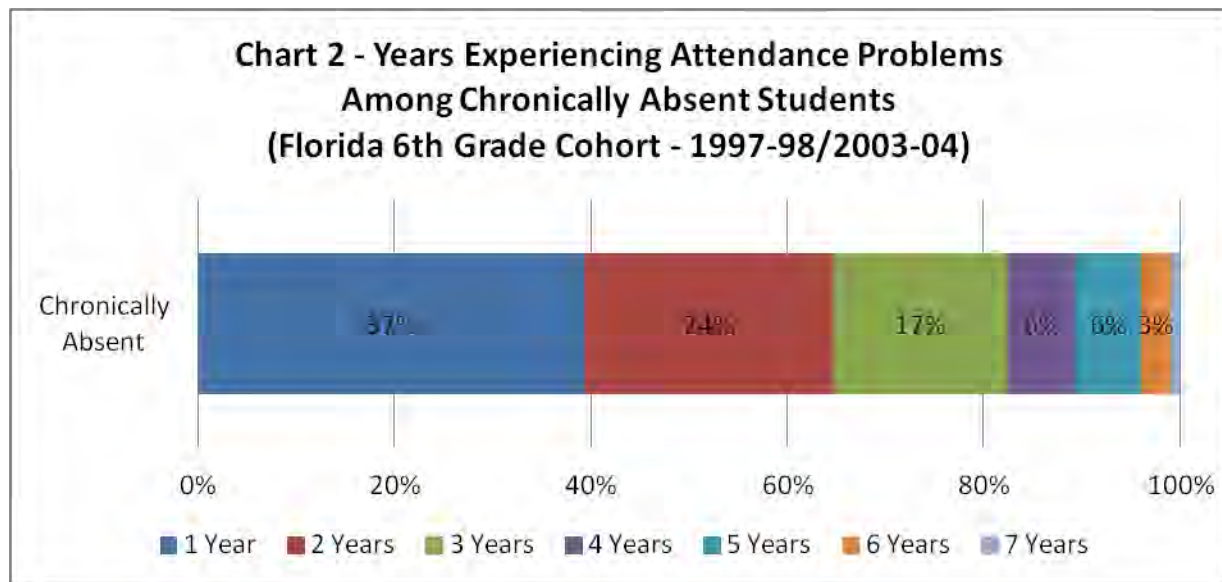
So far our analysis has focused on the extent of chronic absenteeism across a state, school district or school in a given year. There are three other ways to examine absenteeism. How many students are chronically absent at least once, over a span of years? (For example, the elementary and middle school years). How frequently are students chronically absent over the school years? And when both these are combined, how many days of schooling are students cumulatively missing over multiple years? To answer these questions it is necessary to have a longitudinal data set that follows individual students over time. Increasingly states are building the data systems and data sets to enable this analysis (though as mentioned earlier some have not built in crucial attendance variables). In the following set of charts and tables we use longitudinal data from Florida to follow a cohort of all first-time sixth-graders in the state (178,188 in total in 1997-98) over seven years. If the students in this cohort stayed on track and were promoted annually, they should have graduated at the end of the last year we tracked, 2003-04. We also draw on two data sets from Baltimore, analyzed by the Baltimore Education Research Consortium that followed one cohort of students from first grade five and seven years forward, and another from sixth grade, five years forward.

Chart 1 shows that across their middle and high school years **almost half** the students in the Florida sixth-grade cohort had been chronically absent in at least one year (missing a month or more of school). But what is perhaps even more revealing is that one in five students had been severely chronically absent in at least one year (missing two or more months of school). In other words, during the critical middle and high school years when students need to be prepared for adult success, 46 percent of students in at least one of those years missed a month or more of school and 18 percent missed two or more months of school. Some of this occurs in the run-up to dropping out, but not all of it.

This can be seen in data from Baltimore (Plank et.al 2009), which followed students over their elementary and middle grade years. In one cohort that was tracked from first grade forward for seven years, 22 percent of students missed two-ninths, or 40 days, of at least one year, and an additional 25 percent missed more than one-ninth but less than two-ninths, of the year – between 21 and 40 days. Thus, **nearly half** the students in the cohort missed a month or more of school at least once during their elementary and initial middle grade years. It is important not to over generalize from the tracking of just two cohorts over time, but taken together the data from a sixth-grade cohort in Florida and a first-grade cohort in Baltimore are suggestive, that at least in some locales, over the elementary and middle grades, and middle grade and high school years, it is possible for nearly half of all students to experience at least one year of chronic absenteeism, and close to a fifth of students, at least at one point, to miss two or more months of school.



The next characteristic of chronic absenteeism to examine is how often students are chronically absent. Among the sixth-grade cohort of students in Florida, of those students who experienced chronic absenteeism at least once across middle and high school, **Chart 2** shows that attendance problems were episodic (occurring only once) for only a third of them. For the other two-thirds, their attendance problems were persistent, occurring in at least two years. Roughly one-third (39 percent) of these students were chronically absent in at least three years, missing three or more months of school in that time span. Just under one-quarter (22 percent) were chronically absent in four or more years (missing four or more months of school) and 10 percent were chronically absent in five or more years across the middle and high school grades (missing at least half a year of school during that time). Thus, the Florida cohort data suggests that in most cases chronic absenteeism is not an isolated occurrence but a frequent and recurring one with cumulative effects for such students. Similar findings were found with the Baltimore data. Among the first-grade cohort, 51 percent of the students experienced episodic chronic absenteeism (i.e. only once) between the first and fifth grades, but among the sixth-grade cohort, only 30 percent were chronically absent in just one year and half where chronically absent in three or more years (Balfanz, Durham, & Plank 2008).



The true magnitude and implied subsequent consequences of chronic absenteeism on educational outcomes stand in stark relief when total days of school missed over multiple years are examined. Here the findings can only be described as jaw-dropping. As seen in Table 5, the 20 percent of students in the Florida sixth-grade cohort who missed the most days over their middle and high school years missed on average **almost one full year of school**. The 20 percent of students with the second lowest attendance missed on **average half a year of school**. Conversely, on average the top 60 percent of students missed less than two weeks of school per year, with the top 20 percent missing less than one week.

Table 5 – Florida 6th Grade Cohort-Cumulative Days Absent Over Seven Years of Middle and High School by Quintile

	Mean Number of Days Absent	Means Days Absent Per Year
Top 20%	13	3
Upper Middle 20%	35	6
Middle 20%	58	9
Lower Middle 20%	90	15
Bottom 20%	171	28

Baltimore data, possibly because it represents a higher concentration of students living not only in poverty, but in severe multi-generational poverty, is even more extreme. At the elementary level over a five-year period the 20 percent of students who missed the most school, on average missed 125 days of school, or 70 percent of a year. The 20 percent of students with the fewest days missed, by contrast, were absent, on average, only two days of school per year. Among the sixth-grade cohort, the 20 percent of students who missed the most school, missed on average 282 days or a year and half of school. The next 20 percent of students missed on average 162 days or nearly a year of school. This says that 40 percent of students in the cohort missed nearly a year of school or more over a five-year period. The best attending 20 percent of students by contrast, missed on average, less than 5 days per year and 23 days total over five years (Balfanz, Durham, and Plank 2008).

Summing Up: How Big is the Nation's Absenteeism Challenge?

From the data available it is possible to make no more than an educated guess on the size of the nation's absenteeism challenge. The first question to address is how many students are chronically absent, missing either 10 percent, or more than a month, of school? We have data from six states that speak to this. On first glance the state data indicate a wide range – 6 percent to 23 percent. But in looking more closely at how chronic absenteeism is defined and measured in these states, as well as how the characteristics of the state match the nation at large, we can make some deductions about a national rate:

- Florida and Maryland combined, in many ways, are representative of the student body in the nation's public schools, or where it is headed in terms of diversity and income. Florida reports that 10 percent of its students miss 21 days or more of school, and Maryland reports 11 percent. We know, however, that this is a conservative rate, because it measures only students who were enrolled for the full year, and does not capture the absentee rate of students who move in and out of the public schools. Given that school mobility has itself been linked to increased absenteeism, it seems clear that these are undercounts.
- When Oregon and Rhode Island measure students who have missed 18 or more days and at least some of the transfer students, rates of 18 and 23 percent, respectively, are reported.
- This is counter-balanced by the 6 percent rate reported in Nebraska for students missing at least 21 days, and the 9 percent rate in Georgia for students missing more than 15 days. In Nebraska, though, we know 12 percent of students are missing more than 15 days.

- Altogether this suggests a 10 percent estimated national rate for students missing 21 days, or more than a month, of school, assuming transfer students are counted. This is a relatively conservative estimate.
- An argument can also be made for a higher estimate. If chronic absenteeism is defined as missing at least 10 percent of the school year (i.e. 18 or more days instead of 21 or more) and transfers are counted, then the national rate for public school students could approach 14 to 15 percent.

If we apply these metrics to the roughly 50 million students enrolled in grades pre-k to 12 in America's public schools, we estimate that from 5 to 7.5 million students each year are not attending school regularly.

We also know from national, state, and local longitudinal data, that half or more of the students who are chronically absent may be so for multiple years. The available evidence also indicates that about one-quarter of chronically absent students are severely chronically absent, which means missing two months or more of school. This tells us that there are millions of public school students who are missing huge amounts of school.

Locating Chronic Absenteeism

Having established that far too many students are missing far too much school, the next step is to understand when students are not attending, who is not attending, and where they are absent from.

When are Students Chronically Absent?

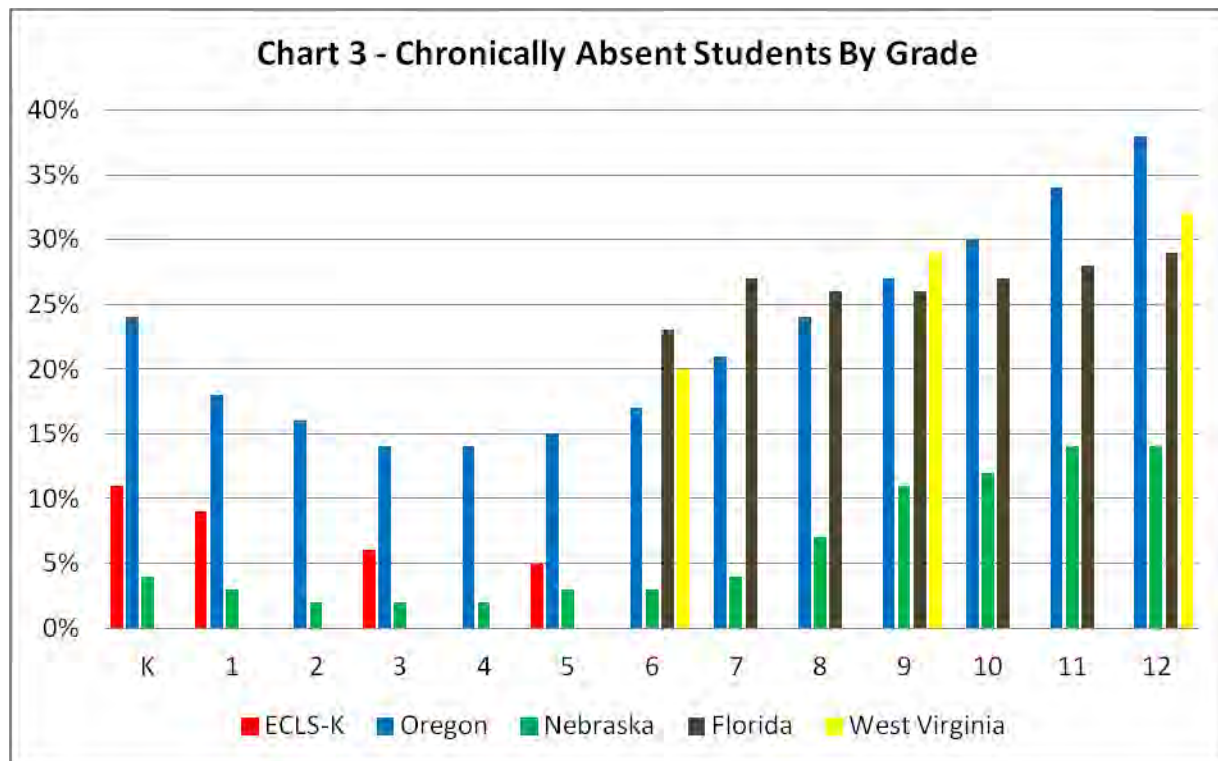
Chart 3 combines available data on chronic absentee rates from several states and one national survey to reveal consistent patterns across the different grade levels¹. After initially high rates of absenteeism in kindergarten where many children are not yet attending school regularly, rates of chronic absenteeism decrease through the third and fourth grades before rising again in the middle grades, especially the sixth through eighth grades². Chronic absenteeism continues to increase through high school, often reaching its highest rate in 12th grade.

Several key points can be inferred from this pattern:

1. First, chronic absenteeism starts early in kindergarten.
2. Second, the fact that absenteeism rates improve over the elementary grades, consistently hitting their lowest levels in third and fourth grades suggests there is a period of adjustment for some families to having their children attend school regularly, but that over time, many do make this adjustment and attendance improves.
3. That the rate of chronic absenteeism then reverses course in the middle grades and steadily and substantially increases throughout high school indicates that new factors arise by the middle grades, leading more students to miss more school.
4. Finally, the fact that the highest rate is often observed in 12th grade indicates that while students who drop out often are chronically absent before they do so, graduating students are not immune from missing significant amounts of school.

¹ Data on chronic absentee rates vary by source, including years available and measurement of absenteeism. ECLS-K data are longitudinal and come from the cohort of students who were in kindergarten in 1998-99. ECLS-K data define chronic absenteeism as missing 18 or more days (roughly 10% of the school year). The four state sources define chronic absenteeism as students who missed 20 or more school days during the year. Data from Oregon are from the 2009-10 school year, Nebraska from 2010-11, West Virginia from 2008-09, and for Florida data are longitudinal and track a cohort of students who were in 6th grade in 1997-98.

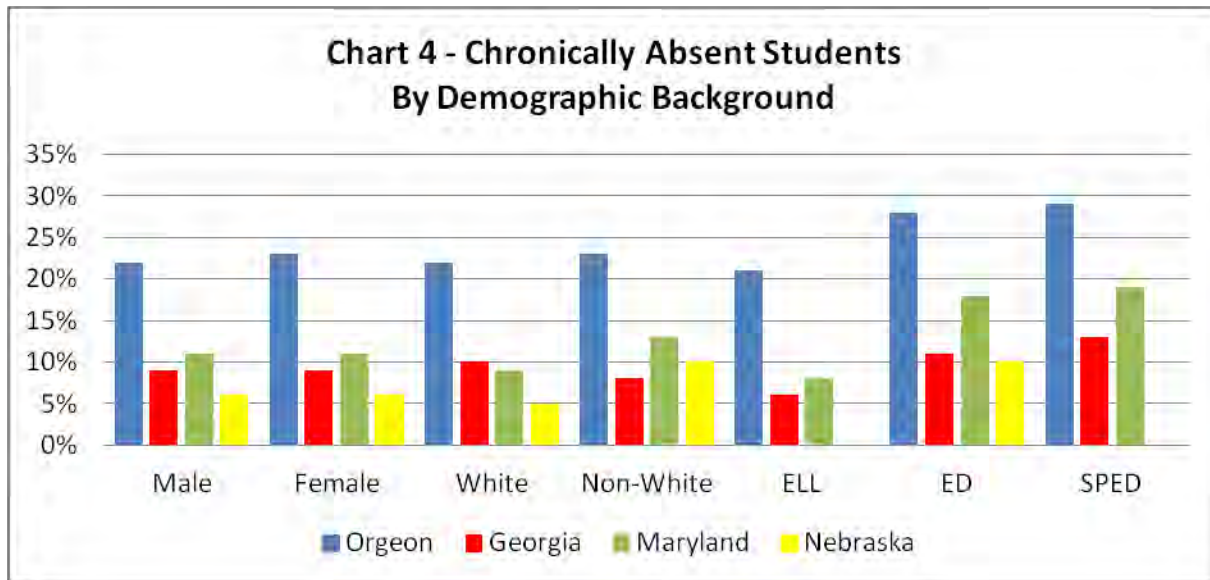
² ECLS-K data found that while chronic absentee rates declined from 3rd to 5th grade for the national sample, they increased in 5th grade for economically disadvantaged students (Romero & Lee, 2007).



Who is Missing School?

As seen in **Chart 4**, rates of chronic absenteeism are similar across gender and ethnic background, but consistently higher among economically disadvantaged students and those in special education classes, across all states for which data were available.³ Data from the ECLS-K survey and from Georgia, Nebraska and Maryland also found that chronic absentee rates were substantially higher for Native American students than for students of other minority and ethnic backgrounds.

³ Data from Georgia, Nebraska and Maryland come from the 2010-11 school-year while data from Oregon are from the 2009-10 school-year. For the state of Georgia, chronic absenteeism is defined as having missed 15 or more days of schools as opposed to 20 or more.



It is notable that at the state level, there does not appear to be a significant difference in the rate at which males and females attend school. The few states that have data also suggest that there may not be large differences across urban, suburban, town and rural areas. In both Oregon and Florida, for example, chronic absentee rates are broadly similar across geographic regions.

One clear relationship that does emerge is a strong correlation between poverty and chronic absenteeism. For Maryland in 2011, chronic absentee rates for students eligible for the federal free and reduced-price lunch program were 10.9 percent in elementary schools, 15.8 percent in middle schools, and 30.8 percent in high schools. Conversely, for student not eligible for the lunch program, the comparable rates were less than 5 percent in elementary and middle schools and 11.8 percent at the high school level. Thus, chronic absentee rates were three times higher among economically disadvantaged students in middle and high schools and at least twice as high in elementary schools. Similar, though somewhat smaller, differences were also found for economically disadvantaged students in Oregon, across all grade levels. In Nebraska, two-thirds of chronically absent students are economically disadvantaged and in Georgia it is 70 percent. In sum, students who live in poverty attend school less frequently than those who do not.

Chronically Absent Students are Concentrated in a Sub-Set of Schools

Looking at data from a recent year in Florida, we see that the numbers of chronically absent students are not distributed evenly across all schools.⁴ **Chart 5** shows the distribution of schools by the percentage of chronically absent students. The large proportion of Florida schools is concentrated toward the bottom with low percentages of chronically absent students. While only 6 percent of all Florida schools had no students who were chronically absent, most schools had low percentages. The state average for all schools was 10 percent of students, with one-quarter of all schools having fewer than 5 percent of their students chronically absent and half of all schools with fewer than 7 percent chronic absentees. There were, however, many schools where chronic absenteeism was a large problem. The top third of all Florida schools with the highest percentages of chronically absent students had 10 percent or more of their students chronically absent, and the top one-tenth of schools had 20 percent or more chronically absent students.

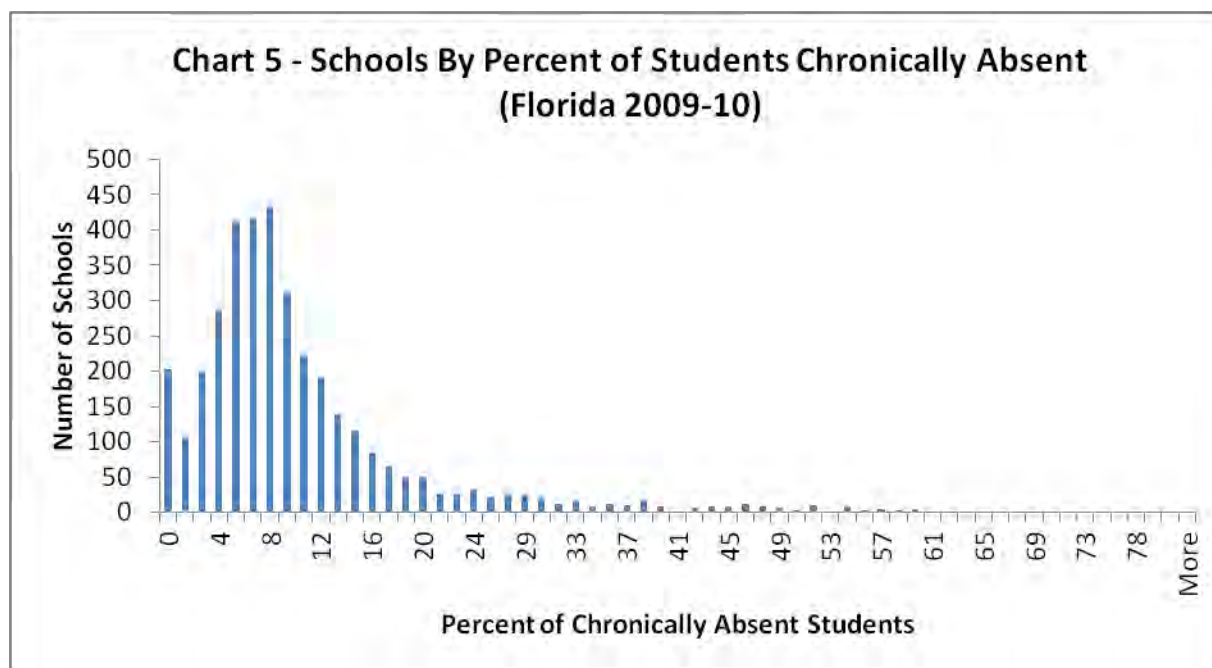
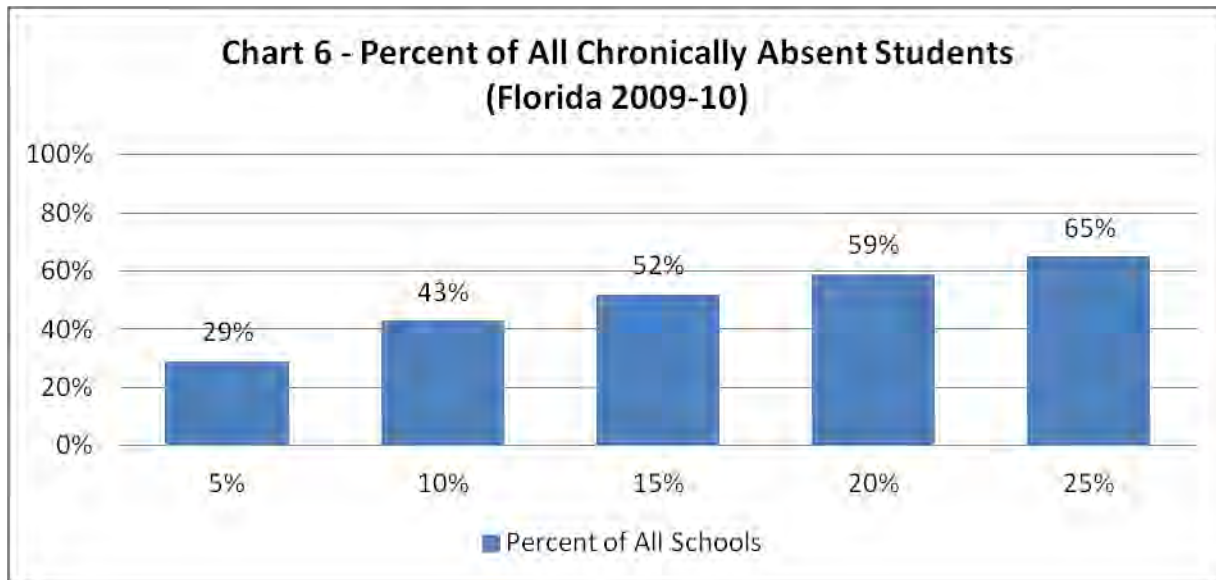


Chart 6 clarifies this concentration of chronically absent students among a smaller proportion of schools where the problem is most pronounced. **Half of all chronically absent students in Florida (52%) were concentrated in only 15 percent of the schools, and between one-quarter and one-third of all chronically absent students (29 percent) were concentrated in only 5 percent of schools.**

⁴ Data exclude schools where fewer than 30 students were enrolled, home education programs, migrant non-enrolled student programs, virtual schools, superintendents' offices, and schools for the deaf or blind.



The concentration of chronically absent students in a sub-set of schools can also be seen in the distribution of Rhode Island students in grades K-3 who miss 10 percent or more of school. In four of the state's 34 school districts, no more than 4 percent of K-3 students are chronically absent. At the opposite end of the spectrum are four districts where the percentage of chronically absent students in grades K-3 runs from 19 to 23 percent.

Summing Up: Who Does Not Attend School

The data indicate that chronic absenteeism cuts across gender and geographic location. It is not a male or female, or urban or rural issue. What is still unknown, however, is if the causes of absenteeism vary by gender and region even if the end result is largely the same. The primary characteristic of students who miss lots of school is that they live in or near poverty. It is important to remember, though, that not all students who are chronically absent are from low-income homes. There is also evidence that chronic absenteeism interacts with the rhythms of schooling. Student absenteeism increases at key transitions – the start of formal education, in kindergarten and first grade, the moves into middle and high schools, and senior year. Finally, the detailed data from Florida suggest that chronic absenteeism is concentrated in a sub-set of schools – just 15% of schools account for more than half of the chronically absent students.

Why Does Missing School Matter?

It may seem obvious that missing school is not a good thing. But given the extent to which schooling is sometimes disparaged as ineffective, failing, repetitive, or beside the point (i.e. “I learned more from a 2-minute record than I ever learned in school”), it is not uncommon for many people to wonder if missing some school is such a big deal.

Also there is the issue of for whom does it matter. As the research on summer learning loss has shown, students who live in high-poverty communities benefit the most from going to school. As a result, it stands to reason that these same students might be hurt the most by absenteeism (Ready 2010).

In the following sections we both review existing research on the relationship between absenteeism and academic achievement, high school graduation and post-secondary enrollment - much of it quite recent and done with high levels of statistical sophistication -- and report on the results of some original analysis for this report, using state and national data sets. The result is an overwhelming case that absenteeism substantially lowers the nation’s educational outcomes.

Early Schooling—Pre-School, Kindergarten, and First Grade

- In a nationally representative data set, chronic absence in kindergarten is associated with lower academic performance in first grade. The impact is two times greater for students from low-income families. Children from low-income families who were also chronically absent in kindergarten had the lowest levels of achievement in fifth grade (Chang and Romero 2008).
- Compared to children with average attendance, chronically absent students gained 14 percent fewer literacy skills in kindergarten, and 15 percent fewer literacy skills and 12 percent fewer mathematics skills in first grade, based on analysis of a nationally representative data set (Ready 2010).
- Children from low-income families with good attendance also gained more literacy skills than peers from higher-income families during kindergarten and first grade (Ready 2010).
- In Baltimore, students who were chronically absent in both pre-k and kindergarten often continued to be chronically absent in later years, and are more likely to be retained and have lower achievement (Connolly and Olson 2012).
- In Oregon, chronic absence in one early grade is linked with lower test scores throughout elementary school; but being chronically absent in both kindergarten and first grade is linked to the lowest scores (ECONorthwest, 2011).

- In San Mateo and Santa Clara counties in California, students who arrived at school academically ready to learn but were then chronically absent in kindergarten and first grade scored 60 points below good attenders on third grade reading tests and close to 100 points below on mathematics tests (Applied Survey Research 2011).

Elementary Achievement

- A sophisticated statistical study that followed multiple cohorts of students through the elementary and middle grades in Philadelphia finds “. . . because the statistical significance of . . . days present is pervasive in all models and across multiple measures of achievement, the results imply that attendance is a robust predictor of student achievement.” (Gottfried 2010).
- A methodologically advanced study using data from New York City suggests that in schools with high chronic absence, the achievement of all students, not just those who are absent, is affected. The study also finds that the predicted effect on fourth-grade English achievement for a student moving from chronic absence to average attendance is greater than gains attributed to attending a high-quality charter school and equal to 17 percent of the achievement gap between white and minority students. In mathematics the predicted gain is equal to 26 percent of the achievement gap (Musser 2011).
- A statistical analysis by the Georgia Department of Education found that just a 3 percent improvement in attendance – five additional days -- would have led more than 55,000 students to pass end-of-year standardized tests in reading, English, or mathematics in grades 3 to 8. The biggest impact was for students who missed between five and 10 days of school, suggesting that missing even a week to two weeks can have a significant negative impact on achievement (Barge, 2011).

Middle Grades Achievement and Its Relation to High School Graduation

- A study of New York City data finds that “While relative improvements or declines in students’ test scores are predictive of students’ progress towards graduation, changes in attendance during the middle grades are also equally, if not more, predictive of the likelihood that students will be on-track in ninth grade to graduate from high school within four years” (Kieffer, Marinell, and Stephenson, 2011).
- A study in Baltimore finds a strong relationship between sixth-grade attendance and the percent of students graduating within one year of expected on-time graduation. Approximately 70 percent of the students missing 0 to 10 days graduated; 51 percent of students missing more than 10, but fewer than 20, days graduated; 36 percent of students missing 20 to 39 days, and just 13 percent of students missing 40 or more days graduated (BERC, 2011).

- A study in Philadelphia finds that only 17 percent of sixth-graders who were severely chronically absent and attend school less than 80 percent of time graduated within one extra year of on-time graduation (Balfanz, Herzog, and MacIver 2007).
- A study that followed four cohorts of students through high-poverty middle schools in Philadelphia found that controlling for teacher quality, prior achievement, behavior, effort, and demographics, students who were chronically absent had significantly lower odds of closing their mathematics achievement gap, than students who were equal in all other respects but attended school regularly (Balfanz & Byrnes 2006).

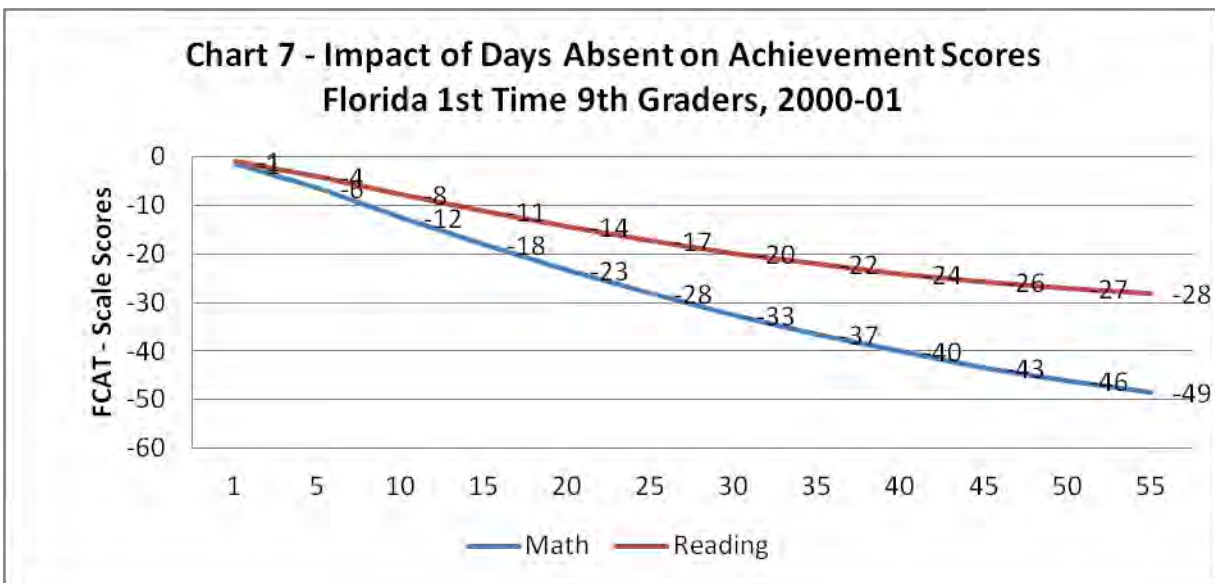
High School Achievement and Paths to Dropping Out

- Analyses of data from Chicago show that course performance in the ninth grade was the strongest predictor of the likelihood that students would graduate, and the school attendance was by far the strongest predictor of course performance. The study found that even moderate amounts of absenteeism had strong impacts. Students with high test scores who missed two or more weeks of school per semester were more likely to fail than students with low test scores who missed a week or less of school (Allensworth & Easton 2007).
- Analyses of data from multiple states and school districts, many conducted in partnership between the Everyone Graduates Center at Johns Hopkins University and the National Governors Association, have consistently found chronic absenteeism to be among the strongest predictor of dropping out of high school, stronger even than suspensions, test scores, and being overage for grade, after having controlled for student demographics and backgrounds (Byrnes & Reyna 2012).
- The Georgia State Department of Education found a strong relationship between attendance in the eighth, ninth and tenth grades and graduation rates, controlling for student demographics. It found that moving from missing up to 5 days to missing 6 to 10 days was associated with 7 to 10 percentage-point drops in graduation rates. Moving from missing 6 to 10 days to missing 11 to 14 days resulted in 11 to 14 point declines in graduation rates. Finally, there was as much as a 50 percentage-point difference in the graduation rates of students who missed 0 to 5 days of school compared to those who were absent 15 or more days (Barge 2011).

Using data from Florida, **Chart 7** also displays the relationship between student absences and academic achievement in ninth grade using regression modeling and models controlling for student ethnicity, special education and English language learner status, free/reduced lunch program status, and overage-for-grade status. The results are significant on several levels.

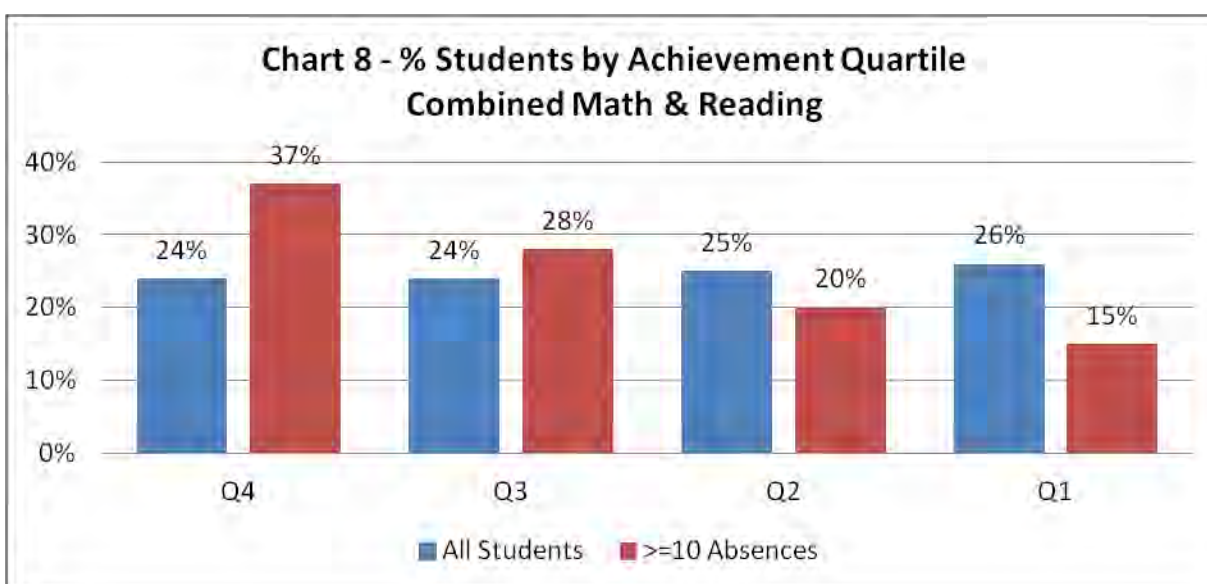
First, they show an essentially linear relationship where each missed day is associated with a further decline in test scores, at least through the first 20 days missed. For math this association continues through missing two months of school, which is associated with a 40-point decline in test scores.

Second, mathematics performance in the ninth grade is more sensitive to missed days than are reading test scores. Through 20 missed days there is a greater than 1 point decline in mathematics performance per day, compared to three-fourths of a point in reading. Absenteeism still has significant negative impacts on ninth-grade reading performance.



The Florida data are supported by data from several other states that we analyzed but do not highlight for brevity's sake. They, too, show an essentially linear relationship between each missed day and lower test performance. They also show impacts for science and English achievement, as well as math and reading. Additional Florida analyses show that there is a strong relationship between eighth-grade attendance and ninth-grade achievement, in part because students with poor attendance in eighth grade tend not to attend school regularly in the ninth grade. The relationship between middle and high school attendance and achievement can be explored first hand at the Rhode Island Data Hub site (www.ridatahub.org)

Poor attendance in high school not only impacts initial achievement levels in the ninth grade, but also impacts upper grade performance and post-secondary enrollment. The following chart is based on data from the National Center for Education Statistics ELS 2002 national survey and is representative of the roughly 3,410,873 tenth-graders enrolled across the nation during the 2001-02 school-year⁵. It shows the relationship between modest to high levels of absenteeism and academic achievement. Students who missed 10 or more days of schools scored disproportionately in the bottom quartile on both math and reading assessments, and were less likely to score in the top half of the student population⁶. Regression models using the ELS2002 data confirmed that the negative relationship between modest to high levels of absenteeism and student achievement outcomes was statistically significant even when controlling for student demographics such as gender, ethnicity, English language learner status, overage-for-grade status, and family income.



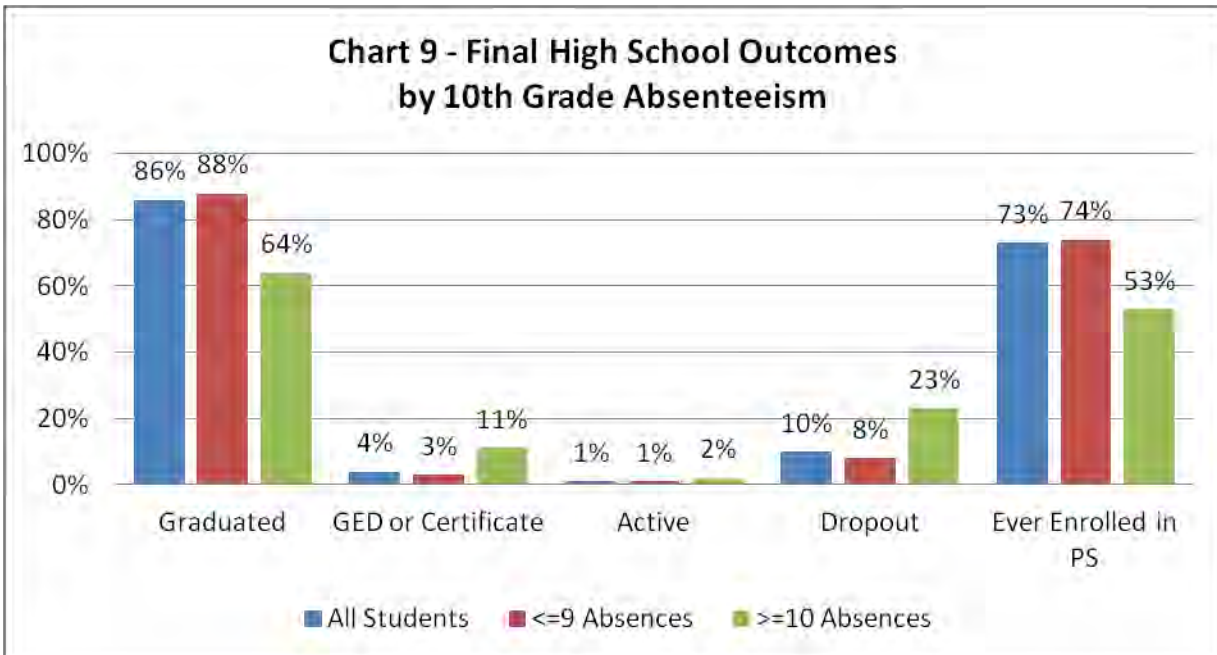
Post-Secondary Enrollment

Also based on data from the ELS2002 survey, **Chart 9** exemplifies the limiting effects that modest to high absenteeism can have on students' high school graduation and post-secondary outcomes. While nine out of every 10 students in the cohort managed to graduate high school, only six of every 10 students with 10 or more absences in the tenth grade ended up successfully completing high school. Students with 10 or more absences were also three times more likely to drop out of high school, with one in four doing so, even after having made it successfully to the 10th grade.

⁵ ELS2002 attendance data come from a categorical student survey question asking students about their absences during the past school year. The most extreme category asked of students was if they had missed 10 or more days, as opposed to the standard definition of chronic absenteeism as 20 or more days.

⁶ Separate results for math and reading achievement are similar to those for the combined scores.

Finally, while roughly three-quarters of students in the cohort enrolled in post-secondary schooling at some point, only half of those students who had missed 10 or more days in tenth grade did so. In other words, among students who make it to tenth grade and ultimately graduate, those who missed 10 or more days of school during the tenth grade had a 25 percentage-point difference in their post-secondary schooling enrollment rates, compared to students with better attendance, controlling for student demographics and family income. This shows that while some students may be able to manage relatively high rates of absenteeism and still graduate from high school, they ultimately pay a price in post-secondary enrollments.



School to Prison Pipeline

- Data from Rhode Island and New York City, among other locales, show that at least three-fourths of the students who become involved with the juvenile justice system have histories of chronic absenteeism (www.ridatahub.org).

Summing Up: Why Attending School Matters

The existing evidence could not be clearer. Academic achievement from kindergarten forward, high school graduation, and post-secondary enrollment are all highly sensitive to absenteeism. Missing even some school can have negative impacts, especially for students who live in or near poverty. Missing a lot of school, at any time, throws students completely off track to educational success.

Given the strong connection among absenteeism, academic achievement, and poverty, the findings indicate that one of the most effective strategies for closing the achievement gap will be a concerted effort to enable and ensure that high-poverty students attend school regularly from pre-k to grade 12. By the same token, the data are clear that given the strong relationship between attendance and achievement, and the extremely high rates of absenteeism in some high-poverty schools, strong academic performance cannot be achieved in all schools when chronic absenteeism rates of 20, 35, and 50 percent are found, respectively, in the most affected elementary, middle, and high schools.

The emerging data on absenteeism and achievement also suggest that we may need to re-examine our assumptions about what has and has not worked to close the achievement, graduation, and post-secondary enrollment gaps. Efforts that have appeared to have been only modestly successful, or not at all successful, may well be shown to have greater potential if the negative impacts of student absenteeism are taken into account and mitigated. Finally, the strong relationship between achievement and absenteeism needs to be factored into on-going efforts to develop next generation accountability systems for schools and teachers.

Why Do Students Miss School?

Students miss school for a variety of reasons. By and large, however, these reasons fall into three broad categories:

1. Sometimes students cannot come to school because circumstances or obligations compel them to be somewhere else during the school day.
2. On other occasions, students will not attend school because they are actively avoiding interactions or events in school or on the way to or from school.
3. Finally, sometimes students just do not go to school, not because there is something preventing or compelling them to stay away, but because they (or their parents or guardians) decide not to attend because they would prefer to be elsewhere, or just do not want to make the effort required to get to school.

What follows are some examples of each category. Considerably more detail on the underlying reasons behind absenteeism, as well as strategies and tools to combat it, can be found at the Everyone Graduates Center (www.every1graduates.org), Attendance Works (www.attendanceworks.org), and National Center for School Engagement (www.schoolengagement.org) websites.

Why Students Cannot Go to School

Illness is the first and foremost reason students can't attend school. Annual colds, flu, and assorted other childhood ailments clearly contribute to school absenteeism, but they are not the genesis of chronic absenteeism. The most recent federal survey indicates fewer than 6 percent of children miss more than 11 days due to illness or injury. Acute health conditions are fortunately rare, and there are few chronic conditions that cannot be appropriately managed to enable school attendance. In practice, however, particularly in high-poverty areas, the medical care needed to enable students with chronic conditions, such as asthma, to attend school regularly are not always available at the scale and intensity required.

A second reason students can't attend school is housing instability. Homelessness, movement between foster care placements, and the temporary dislocation associated with home foreclosure or inability to pay rent can cause students to miss days, as parents or guardians work to re-establish living quarters and enroll students in new schools. Family obligations are another reason some students cannot go to school. As children enter early adolescence, family responsibilities can keep them from school. In high-poverty environments, young adolescent girls sometimes provide emergency day care for younger siblings or are responsible for getting younger children to school. There is also growing evidence of even young adolescents taking on elder-care responsibilities in single parent, multi-generational households. Adolescents, moreover, are sometimes pulled into helping with the family business or working to enable family or personal survival. In other cases, they are compelled or lured into illegal activities. Students who become involved in the juvenile justice system then often miss additional days of schools while being detained, going to court, and transitioning back into school.

Why Students Will Not Go to School

It is likely that nearly everyone at one time or another has wanted to miss a day of school to avoid an unpleasant situation or because an assignment was not completed. For some students, however, the desire is much more constant. Students stay away from school to avoid harassment, bullying, and unsafe situations on the way to and from school. They also stay away to avoid real and perceived embarrassment. For example, some students report avoiding school because they knew they would be asked to read out loud in class, and feared this would reveal either speech impediments or poor reading ability. Others avoid school for lack of clean or appropriate clothes. Sometimes it is rain, snow or cold combined with the lack of the necessary clothing, especially for students who take public transportation with multiple connections. In some cases, poor planning, family needs, or unpredictable transportation lead to students being late, and they stay away from school altogether to avoid the hassle and sometimes the sanctions associated with tardiness. Finally, there is the uncertainty of new environments. It does not seem coincidental that chronic absence spikes in kindergarten, sixth grade, and ninth grade. Those are the years that students typically attend a new school and may face adjustment issues or experience a less welcoming or more unfriendly or even upsetting environment.

Why Students Do Not Go to School

The final category is students who could go to school, and are not being deterred by anything specific. Instead they are choosing not to attend, either because they or their parents or guardian do not see the value in school attendance or they have something else they would rather be doing, and they have the agency and ability to skip school to do it. Choosing not to attend school on a regular basis begins early in a child's formal education when some parents do not yet see the importance of their child being in school every day. Some parents consider pre-k and kindergarten extensions of day care with its optional drop-in nature. For others, it takes a while to establish a family routine that enables regular school attendance (Chang & Romero 2008).

By early adolescence students develop the wherewithal to skip school. Parents may see them off, but students soon learn, especially in urban areas where they take mass transit to school, that no one at the school is checking to see if they arrive. In one survey, more than half of students reported they did not believe that any of their teachers miss them or notice when they are not there. Students report missing school because they “felt like it,” “overslept” or “wanted to hang with friends.” They also report that they miss school because not much is going on and they can pass the course only attending sporadically. Others talk of needing a “mental health” day or taking a day off after a busy weekend. In many cases, the students return to an empty home while their parents are at work. Although we are not aware of any studies that have examined it directly, our experience in high-poverty schools with high chronic absenteeism leads us to surmise that attending school irregularly almost becomes a norm passed on to each ninth-grade class. The spike in the senior year is also revealing, as it is clear that once some students believe they have the credits they need to graduate, their diligence in attending school wanes.

Separating the reasons students miss school into the three categories of can’t, won’t, or don’t helps illustrate the range and diversity of why students are not in school, and helps organize a response. But in working with high-poverty students, in particular, it becomes clear in many cases that a student’s absenteeism is often driven by all three on different days and in different situations. Especially by the time they are adolescents, students who live in poverty have complex lives and must make trade-offs among competing demands, often without effective adult guidance or complete information.

What Can Be Done?

While at national and state levels chronic absenteeism is largely an overlooked phenomenon, at the local or school level its impact, at least in some cases, has been appreciated and has led to a response. These efforts, in turn, have shown that chronic absenteeism is not a demographic imperative or unalterable by-product of poverty. Rather, vigorous and comprehensive efforts to get more students to attend school regularly pay off. Several reports have documented the existence of beat-the-odds schools, that is, schools that serve similar populations in the same geographic locale as schools with very high chronic absenteeism rates, yet manage through concentrated and systematic efforts to have much higher proportions of students attending school regularly. (ECONorthwest 2011, Nauer, White & Yerneni 2008, Chang & Romero 2008).

There is also evidence that school districts can see broad systematic improvement over time. In Baltimore, for example, the chronic absenteeism rate for middle grade students has declined dramatically from 34 percent in 2007 to 16 percent in 2011. This coincided with the acceleration of efforts to replace large dysfunctional middle schools with either K-8 or 6-12 opportunities, much more aggressive tracking, monitoring, and responding to chronic absenteeism by the school district, and the launching of partnerships among the school system, city hall, and non-profit organizations to mount a community-wide campaign against absenteeism. The challenge of poverty and its impacts on attendance, though, continues to be seen. Dislocations caused by the foreclosure crisis likely are contributing to a recent uptick in chronic absenteeism in elementary schools, and the continued persistence of high absenteeism in high schools.

What follows are some examples of progress and the efforts behind them at the national, non-profit, local, and school levels. What all these efforts have in common are a) close, often weekly, measurement and tracking of absenteeism, b) the development of a diagnostic capacity to understand why students are missing school, c) a problem-solving capacity to help address those reasons, d) building and sustaining relationships with the students who are experiencing absenteeism, and often their families, e) the development of a multi-sector and community response that often involves a second shift of adults in the schools with the highest levels of chronic absenteeism to meet the scale of the challenge, f) efforts to recognize and reward good attendance, and g) a commitment to learn what works, and then to replicate and expand effective programs to modify what is not working.

What's Working?

Diplomas Now

Students are dancing their way to better attendance and a more positive school climate at Dever-McCormack K-8 School in Boston.

Dever-McCormack's teachers, administrators and staff boosted students' enthusiasm for being at school by sponsoring the AttenDANCE as an incentive for attending at least 95 percent of the 45 days in the second quarter. More than 200 sixth-graders attended the first AttenDANCE in January at a hall across from the school.

Dever-McCormack is part of Diplomas Now, a network of middle and high schools using a proven approach to school improvement that ensures students graduate ready for college or career. It is based on research showing that a sixth-grader with even one of the early warning signs of poor attendance, poor behavior or failure in English or math is 75 percent more likely to drop out of high school than other students.

Attendance is the critical first step because students must be in school to learn.

"Most kids love incentives," said Katie Grassa, Diplomas Now coordinator at the school. "Many of them were excited about the dance and were getting more interested in being at school."

One student, who was under a court mandate to attend school, earned perfect attendance so he could be included in the first AttenDANCE.

Efforts such as AttenDANCE have helped Dever-McCormack achieve double-digit attendance gains. Last year, one-third of the students attended less than 92 percent of the time. This year, just 23 percent fall into that category. "Our improvement in attendance is due to better use of attendance data, improved coordination of a team of adults working to support students and families, and creative incentives (such as the AttenDANCE) that have captured students' attention," said Michael Sabin, principal of Dever-McCormack. "We have learned that steady pressure, teamwork and an ongoing focus on attendance will produce positive results."

AttenDANCE was so popular and effective that the Diplomas Now team and the school staff scheduled a second dance. In anticipation, students began regularly tracking their own attendance rates to be sure they would be invited.

Diplomas Now is a collaboration of three non-profits – City Year, Communities In Schools and Talent Development Secondary at the Johns Hopkins University School of Education – that works to improve the whole school, create a positive teaching and learning environment, and brings extra adults who use an early warning data system to identify students falling off the graduation path. Diplomas Now strives to bring the right intervention to the right student at the right time. It provides curriculum, teacher coaching and student support from the Talent Development model.

City Year corps members, young adults working full-time in the school, welcome students, call them if they don't show up, provide tutoring and celebrate positive behavior. For the neediest

students, Diplomas Now provides case management by Communities In Schools site coordinators and connects students with community resources, such as counseling, health care, and housing.

Dever-McCormack is not the only Diplomas Now school where attendance improved. Here are the declines in students identified as chronically absent at the beginning of the 2010 school year, but who were on-track by the end of the school year.

- 83 percent decrease in absenteeism at Browne Education Campus in Washington, DC.
- 45 percent decrease in absenteeism at Miami (Fla.) Jackson High School.
- 31 percent decrease in absenteeism at John Liechty Middle School in Los Angeles.

New York Mayor Bloomberg's Chronic Absenteeism Task Force

More than 30,000 students in New York get wake-up and get-to-school calls from Michael Jordan, Whoopi Goldberg or one of the Yankees.

More than 4,000 students have Success Mentors who interact with them in school on an on-going and consistent basis to talk about coming to school on time every day and help them solve some of the problems that get in the way of their showing up.

In 50 pilot schools, weekly principal-led attendance meetings are held, where teams of adults including school staff and external partners examine current data on absenteeism, devise solutions to get more students to attend regularly, and monitor progress.

On Metro bus and subway signs, New Yorkers are being prodded: "It's 9 a.m. Do You Know Where Your Children Are?"

These and other activities aimed at reducing and eventually ending chronic absenteeism in the city's public schools are the results of Mayor Michael Bloomberg's Interagency Task Force on Truancy, Chronic Absenteeism and School Engagement. Over the last two years, the task force has clearly moved absenteeism prevention to the head of the class.

With more than 1.1 million students in 1,700 schools, New York is the nation's largest school system – and the task force effort is the nation's most comprehensive campaign against absenteeism. Though still young, the effort has significantly reduced chronic absenteeism in the 50 schools participating in the pilot program. Last year, for instance, students in these schools with Success Mentors racked up an additional 7,000 days in class. And the city's Homeless Services helped bring the be-in-school campaign to youngsters living in 15 homeless shelters, often allowing these students to stay in their "home" schools.

The task force is a huge effort, combining a dozen city agencies and many other public-private partners, to spread the word about how pervasive chronic absenteeism is, how it affects student achievement, and what can be done about it. Next year it will expand to an additional 50 schools.

The campaign began with an acknowledgement of the problem and a commitment to getting and using data. When the task force realized that the data existed, but were not used because the system was too complicated, it worked with the city's education department to create a "data dashboard" that enabled mentors, school personnel and community partners to see real-time data on student attendance. From this it became possible to flag students who were at risk of being chronically absent, missing 10 percent, or at least 20 days, of a school year.

Besides helping the pilot schools, the system-wide database can now flag all students who have missed 20 days or more of school – an early indicator of students most likely to drop out.

Underpinning the work of the task force is a significant infrastructure that manages not only data, but also training and technical assistance, weekly principal-led student success meetings in each pilot school, a strong connection between the mayor's office and the education department, and extensive strategies for sending and receiving information. The expectations are high for Success Mentors, who are required to spend approximately 15 hours a week at a school, with 80 percent of that time devoted to students. Mentors greet students, call the homes of absentees, meet individually and in groups with the students, identify the underlying causes of absences, celebrate students' talents and successes, and work with the school and its partners to connect students and their families with local resources to address the absentee problem.

Additional programs include:

- An Asthma-Friendly Schools Campaign to address the large number of elementary school students who miss school frequently because of this condition
- Homework centers established in all city family shelters to help create a culture of school attendance and success
- Large scale public information ad campaign on the importance of regular school attendance
- Web-based parental access to their students' attendance data and an "ask for help getting my child to school" feature
- Quarterly in-person attendance help desks in the city's public libraries

Attendance Works

Nearly every state has attendance information sitting in its longitudinal student data base, but few ever look to see what it shows about absences and academic performance. Attendance Works decided to change that.

[Attendance Works](#) is a national and state initiative that advances school success by reducing chronic absence. Its goal is to ensure that every district monitors this often-overlooked attendance indicator beginning in kindergarten or pre-kindergarten, and partners with families and communities to intervene when poor attendance is a problem for children or particular schools. Attendance Works builds public awareness and political will about the need to address chronic absence, fosters state campaigns to advance better attendance policies and encourages local innovation, data use and accountability through accessible tools, peer learning communities and targeted technical assistance.

Attendance Works believes a key starting point is using the attendance data found in most states' longitudinal student data bases to identify how many students are academically at risk because they have missed too much school and then determine which districts, schools and student populations are most affected.

When Attendance Works became a partner with EcoNorthwest, The Children's Institute and The Chalkboard Project to analyze data for Oregon, the findings surprised many people. More than one-fifth of Oregon's students were chronically absent, missing 10 percent or more of the school year. Chronic absence affected every part of the state, every grade level and children from every ethnic and racial background. As in national studies, absentee rates were highest among low-income children and highest in kindergarten and high school.

Using six years of data, Oregon's analysis by the EcoNorthwest consulting firm tracked two cohorts of students to see the effects of absenteeism over time. In both cases, absences in the earlier grades correlated with lower attendance and achievement later on.

The report, released in February 2012, prompted the governor's office to add chronic absence as an indicator in its newly created [achievement compacts](#) that districts will make with the state. Specifically, districts must report the percentage of sixth-grade students missing 18 days or more, or 10 percent of the school year.

In May 2012, The Chalkboard Project then made chronic absence data available on-line for every district in Oregon. Such public reporting is key to ensuring the public is aware of which communities are most troubled by absenteeism so that community stakeholders can begin partnering with schools to identify and address barriers to school attendance.

What are the Policy Implications?

These three illustrative examples of progress in combating chronic absenteeism show that chronic absence can be significantly reduced when schools and communities use data to inform action, build a culture of regular attendance, and help families and students overcome barriers to getting to school. In order for these efforts to be brought to scale and for the nation as a whole to significantly reduce the number of students who are excessively missing school, and in so doing improve the life outcomes of millions of students per year, policy changes are needed at the federal, state, and local level.

The good news is that in a time of tight federal, state, and local budgets there are a number of low cost, high impact actions that can be taken - which have the potential to improve lives, as well as the health and wealth of communities. At the simplest level, the federal government, states, local communities, school districts, and schools need to measure, monitor, and act to limit absenteeism. For example:

At the Federal Level

- Add questions about the extent of chronic absenteeism (i.e. number of students missing 10% or more of school) and regular attendance (i.e. number of students missing 5 or fewer days in a year) to the U.S. Department of Education's Office of Civil Rights annual school survey. This is the quickest and most efficient route in getting data on chronic absenteeism at the school level, nationwide. This in turn will provide communities with the information they need to target support efforts to the most impacted schools.
- Add measuring, monitoring, and responding with evidence-based strategies to chronic absenteeism, as part of a broader early warning system, to the list of required elements in the school turnaround model that states seeking flexibility waivers from ESEA need to employ in their lowest-performing 5 percent of schools, and to the required activities for school districts and schools receiving school improvement grants.
- Add state level efforts to measure, monitor, and respond with evidence-based strategies to reduce absenteeism as a requirement for Race to the Top competitions and as a priority goal in Investing In Innovation (i3) competitions.
- When the Elementary and Secondary Education Act (ESEA) is re-authorized include the measuring, monitoring, and responding to absenteeism as a required school improvement activity for states, districts and schools receiving Title 1 funds, and link it to early warning systems keyed to post-secondary success indicators.

- As part of the ESEA re-authorization, create a dedicated funding stream or specifically target a portion of existing Title 1 funds to support comprehensive and evidence-based, multi-partner efforts to reduce absenteeism including support for a second shift of adults, who can work with teachers in school on an on-going basis, to form the relationships with students and parents that are needed to solve the underlying issues keeping students from school.

At the State Level

- Measure and monitor absenteeism, include measures of chronic absenteeism and regular attendance on state, district, and school report cards (see www.mdreportcard.org for an example)
- Add reporting on chronic absenteeism and regular attendance to the new school accountability systems being developed through flexibility waivers from ESEA (see www.attendanceworks.org for some guidance)
- Join the growing number of states that are implementing or championing early warning systems that provide schools, teachers, and parents with on-going real time data on absenteeism and flag students for intervention and support who reach the 10% threshold or are on the path to missing a month or more of school (see www.every1graduates.org for more information)
- In states receiving flexibility waivers from ESEA target some of the funds previously reserved for supplemental education services to district level evidence-based efforts to provide targeted supports to students who exhibit off track indicators, including chronic absenteeism.
- Create a governor's inter-agency task force to examine how multiple state agencies can help students attend school more regularly in a coordinated fashion. For example, how public health efforts can be targeted at some of the underlying health issues like asthma that keep students from school, how efforts for homeless families can include support in getting their children to school each day, how the juvenile justice system can work to reduce the number of days of school missed as students interact with it. Also conduct pilot programs to examine the efficacy of using funds allocated for health, juvenile justice, foster care, the court system etc. to support efforts to improve the regular school attendance of students under their care or most likely to be so in the future, as an effective means of increasing the positive outcomes they seek for these youth
- Examine state policies that involve school attendance, student behavior, and academic performance to insure that they are not counter-productive. For example, suspending students who are chronically absent, or having students who miss a certain amount of school automatically fail a class (and in so doing in both cases encourage the students to miss more school)

At the Local Level

- Make real-time data on student absenteeism available to schools, teachers, and parents. Flag students who are chronically absent or on the path to becoming so. Once a month, publically report on school level chronic and regular attendance rates. This will enable the more effective and efficient targeting of resources, enable the examination of attendance patterns over time and across schools, to identify, for example, both the times of year when extra community attention is required, and schools that are beating the odds, that others can learn from.
- Implement Early Warning Systems and form community partnerships with organizations like the United Way, national service organizations, and other student support providers to target additional adult supports to the schools with large numbers of chronically absent students. Integrate them into on-going school-led data review and student/school response meetings in which solutions to prevent, combat, and mitigate the impacts of absenteeism are devised, assigned, and monitored, in a coordinated fashion.
- Establish a mayor's office or joint mayor's office/school superintendent's inter-agency task force to prevent and combat absenteeism. See governor's task force above for details. See Baltimore and New York City for models. Use the task force to make absenteeism a high profile community-wide issue, involve the business, community action, and faith-based sectors.
- Conduct a school policy audit to make sure school policies support and encourage regular school attendance. For example, that lateness policies and penalties are not so onerous that they encourage students who will be late, to skip the whole day of school. Have monitoring of school-level absenteeism and the strategies schools use to respond to it as one of the elements principals are reviewed on by their supervisors

In Conclusion

Attending school on a regular basis matters. It matters the most for our most vulnerable students who live in or near poverty. Millions of students are currently missing far too much school, with multiple detrimental effects. Chronic absenteeism is a key driver of the nation's achievement, high school graduation, and college attainment gaps. A major reason this occurs, is because few schools, districts, or states routinely measure absenteeism. Because chronic absenteeism is not measured, it cannot be monitored or acted upon. The good news is if we do measure and monitor absenteeism there is quite a bit that can be done to improve it with existing resources. Thus, as a nation we must act, to ensure that our students are ready, willing and able to attend school every day. Their future, and hence our future, depends on it.

Data Sources

Data from the Early Childhood Longitudinal Study, Kindergarten Class of 1998-99 (**ECLS-K**), were obtained from the National Center for Education Statistics (NCES), specifically from a licensed copy of the restricted use data files obtained by the Everyone Graduates Center at Johns Hopkins University.

<http://nces.ed.gov/ecls/kindergarten.asp>

Data for the state of **Florida** come from the state's department of education website, and from a longitudinal data set obtained from the state's K20 Education Data Warehouse.

<http://www.fldoe.org/>

<http://edwapp.doe.state.fl.us/>

Data for the state of **Georgia** come from the state's department of education website.

<http://www.doe.k12.ga.us/Pages/Home.aspx>

Data for the state of **Maryland** come from the state's department of education website and from the Maryland State Report card.

<http://www.marylandpublicschools.org/MSDE>

<http://www.mdreportcard.org/>

Data for the state of **Nebraska** come from the state's department of education website and from data provided by the state upon request for this report.

<http://www.education.ne.gov/>

Data for the state of **Oregon** come from the paper "*Chronic Absenteeism in Oregon: Data Exploration*" by ECONorthwest.

Data for the state of **Rhode Island** come from the state's department of education website.

<http://www.ride.ri.gov/>

Data for the state of **West Virginia** come from data sets received by the Everyone Graduates Center at Johns Hopkins as part of a project studying high school dropouts conducted in partnership with the state and the National Governors Association.

References

- Applied Survey Research 2011. *Attendance in Early Elementary Grades: Association with Student Characteristics, School Readiness and Third Grade Outcomes* Applied Survey Research
- Balfanz, R. & Byrnes, V. 2006. *Closing the Mathematics Achievement Gaps in High Poverty Middle Schools: Enablers and Constraints* Journal for Educating Students Placed at Risk 11(2) p.143-157
- Balfanz, R., Herzog, L., & MacIver D. 2007. *Preventing Student Disengagement and Keeping Students on the Graduation Path in Urban Middle Grade Schools: Early Identification and Effective Interventions* Educational Psychologist 42(4) p, 223-235
- Balfanz, R., Durham, R., & Plank, S. 2008. *Lost Days: Patterns and Levels of Chronic Absenteeism Among Baltimore City Public School Students 1999-00 to 2005-06*. Baltimore Education Research Consortium, Baltimore, MD.
- Baltimore Education Research Consortium (BERC) 2011. *Destination Graduation: Sixth Grade Early Warning Indicators for Baltimore City Schools: Their Prevalence and Impact* BERC: Baltimore MD.
- Barge, J. 2011. *Student Attendance and Student Achievement* Georgia Department of Education
- Byrnes, V. & Reyna, R. 2012-forthcoming. *Summary of State Level Analysis of Early Warning Indicators* Everyone Graduates Center, Baltimore MD.
- Chang, Hedy N and Romero, Mariajosé 2008. *Present, Engaged and Accounted For The Critical Importance of Addressing Chronic Absence in the Early Grades*. National Center for Children in Poverty (NCCP): The Mailman School of Public Health at Columbia University.
- Connolly, F. & Olson, L. S. 2012. *Early Elementary Performance and Attendance in Baltimore City Schools' Pre-Kindergarten and Kindergarten*. Baltimore Education Research Consortium, Baltimore, MD.
- ECONorthwest. 2011. *Chronic Absenteeism in Oregon: Data Exploration*. Portland, OR.
- Gottfried, M. 2010. Evaluating the Relationship Between Student Attendance and Achievement in Urban Elementary and Middle Schools: An Instrumental Variables Approach American Educational Research Journal 47(2) pp. 434-465.
- Kieffer, M. J., Marinell, W. H., & Stephenson, N. S. 2011. *The Middle Grades Student Transitions Study: Navigating the Middle Grades and Preparing Students for High School Graduation*. The Research Alliance for New York City Schools.
- Musser, M. P. 2011. *Taking Attendance Seriously: How School Absences Undermine*

Student and School Performance in New York City. The Campaign for Fiscal Equity, Inc.

Nauer, K., White, A., & Yerneni R. 2008. *Strengthening Schools by Strengthening Families: Community Strategies to Reverse Chronic Absenteeism in the Early Grades and Improve Supports for Children and Families.* Center for New York City Affairs, Milano the New School for Management and Urban Policy.

Plank, S., Farley-Ripple, E., Durham, R. & Norman, O. 2009. *First Grade and Forward: A Seven-Year Examination Within the Baltimore City Public School System* Baltimore Education Research Consortium, Baltimore MD.

Ready, Douglas. 2010. *Socioeconomic disadvantage, school attendance, and early cognitive development: The differential effects of school exposure.* Sociology of Education, 83(4) 271-286.

Romero, M. & Lee, Y. 2007. *A National Portrait of Chronic Absenteeism in the Early Grades.* New York: National Center for Children in Poverty.

EXHIBIT 2

Center for Educational Performance and Information

[CEPI Home](#)
[Contact CEPI](#)
[MI.gov](#)


CEPI / MI SCHOOL DATA

MI School Data

MI School Data is the State of Michigan's official public portal for education data to help citizens, educators and policy makers make informed decisions that can lead to improved success for our students.

The site offers multiple levels and views for statewide, intermediate school district, district, school, and college level information. Data are presented in graphs, charts, trend lines and downloadable spreadsheets to support meaningful evaluation and decision making.

- Help and Support. MI School Data support section with tools, tips and recent news.
- Updates and announcements. Sign up to receive notification of new reports, data refreshes, and other news.
- Secure Login Authorizer for K-12 Personnel. Contact your ISD technical or curriculum advisor.
- Secure Login Authorizer for College & University Personnel. Contact your College or University Keyholder.
- Secure Login Authorizer for State of Michigan Personnel. Contact CEPI.
- Authorized Presenters/Trainers. A list of our train-the-trainer participants who can provide MI School Data training to a variety of audiences in your region.



For the **Attendance** report, the attendance rates are calculated by dividing days attended by total possible attendance. Days attended is the number of days students were present at school. Total possible attendance is the number of days students could have attended from the first day of school, the date of new enrollment, or the beginning of a program (e.g., summer school). Prior to school year 2017-18, a student was counted as absent by a district only if they missed a full day of school. Beginning with school year 2017-18, that criteria changed so that students are counted as absent if they miss more than 50 percent of the school day. This aligns with [Every Student Succeeds Act](#) requirements. For details on this reporting, exemptions and other information, please see the MSDS Collection Details Manual on the [CEPI website](#). The students are deduplicated in cases of shared enrollment. For 2013-14 and future school years, student count is based on the operating entity, or the entity where the students are seated; in most cases, the Primary Education Providing Entity (PEPE) and operating district are the same. Data are included in the attendance report at the school level, district level, the intermediate school district level (ISD), or the state level.

For school years 2014-15 and prior, students are included as chronically absent if they had 10 or more missed days. Beginning with school year 2015-16, they are considered chronically absent if they miss 10 percent or more of possible days.

The total number of chronically absent students in the state includes Grade 14 for school years prior to 2015-16, but Grade 14 is not included in the By Grade report category. Beginning with school year 2015-16, Grade 14 is excluded from the report.

The attendance rate for all students was added to the report beginning with the 2011-12 school year, so trend lines for Attendance Rate (All) begin with that year.

The report is updated annually in early fall.

Report Labels

Location Name/Type/Entity: You can select and compare data at different entity levels: statewide, by ISD, by school district, and by individual schools that include all local education agency (LEA) and public school academy (PSA) schools. PSAs, also known as charter schools, are considered their own school district.

Report Category: Select to sort and filter your data including all students, grade level, and demographic groups.

Attendance Rate (All Students): The attendance rate for all students in the selected categories who were enrolled in a specific entity (number of days attended / number of total possible attended).

Total Count (All Students): K-12 students for whom attendance was required to be reported in MSDS, and who were enrolled in a district for at least 10 consecutive days.

Attendance Rate (Chronically Absent): School year 2014-15 and prior: The attendance rate for students in the selected categories with 10 or more absences at a specific entity (number of days attended / number of total possible attended).

School year 2015-16 and after: The attendance rate for students in the selected categories who missed 10 percent or more of possible days at a specific entity (number of days attended / number of total possible attended).

Chronically Absent: School year 2014-15 and prior: Total count of students with 10 or more absences during the scheduled school year. School year 2015-16 and after: Total count of students who missed 10 percent or more possible days during the scheduled school year.

% Chronically Absent: School year 2014-15 and prior: Percent of students with 10 or more absences during the scheduled school year. School year 2015-16 and after: Percent of students who missed 10 percent or more possible days during the scheduled school year.

Attendance Rate (Not Chronically Absent): The attendance rate for students in the selected categories who missed fewer than 10 percent of possible days at a specific entity (number of days attended / number of total possible days attended).

Not Chronically Absent: Total count of students who missed less than 10 percent of possible days during the scheduled school year. (Available beginning with school year 2015-16.)

% Not Chronically Absent: Percent of students who missed less than 10 percent of possible days during the scheduled school year. (Available beginning with school year 2015-16.)

Race/Ethnicity: Information about race and ethnicity categories can be found in the MSDS Collection Details Manual on the [CEPI website](#). Note: When viewing trend data, you may see gaps and breaks because [federal race definitions and categories](#) have changed throughout the years.

Economically Disadvantaged (ED): Students who have been determined to be eligible for free or reduced-price meals via locally gathered and approved family applications under the National School Lunch program, are in households receiving food

(Supplemental Nutrition Assistance Program) or cash (Temporary Assistance to Needy Families) assistance, are homeless, are migrant, are in foster care, or, beginning in 2017-18, certain MEDICAID eligible children. When any of these conditions are present, a student is considered economically disadvantaged.

English Learners: English Learners are students who speak a language other than English as their primary language and who have difficulty speaking, reading, writing, or understanding English.

Homeless: Individuals who lack a fixed, regular, and adequate nighttime residence. The definition and guidelines come from the federal [McKinney-Vento Homeless Assistance Act](#).

Migrant Students: Students whose families have moved within the previous 36 months to obtain temporary or seasonal work in agriculture or fishing.

Students with Disabilities: Students with one or more specific impairments who require special education or related services and have an Individual Education Plan (IEP).

Data Collection

CEPI collected the source data for this report in the Michigan Student Data System (MSDS). For school years 2012-13 and earlier, student count data was based on the Primary Education Providing Entity (PEPE), or the entity that is financially responsible for students. For 2013-14 and future school years, student count is based on the operating entity, or the entity where the students are seated; in most cases, the PEPE and operating district are the same. For more details on the data definitions and how the data is collected, please refer to the MSDS Collection Details Manual on the [CEPI website](#).

Data Calculations

Rates are calculated for a school or district by dividing aggregated total days attended by aggregated total possible attendance. Using a simplified example, three students attend a small school. Their days were entered as:

Student 1: 45 days attended; 50 days possible (chronically absent student)

Student 2: 175 days attended; 180 days possible (not chronically absent student)

Student 3: 32 days attended; 176 days possible (chronically absent student)

Attendance rates would be calculated like this:

All: $(45+175+32)/(50+180+176) = 252/406 = 62$ percent

Chronically Absent: $(45+32)/(50+176) = 77/226 = 34$ percent

Not Chronically Absent: $175/180 = 97$ percent

EXHIBIT 3



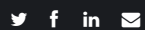
INTRODUCTION

WHO IS IMPACTED

UNSTABLE PATHWAYS

CHRONIC ABSENCE MAPPED

WHY IT MATTERS



CHRONIC ABSENTEEISM IN THE NATION'S SCHOOLS

A hidden educational crisis.

— U.S. DEPARTMENT OF EDUCATION



Powered by InformedED and the 2015-16 Civil Rights Data Collection.



Enable High Contrast (508)

Data Illuminates the Extent of Chronic Absenteeism

Education can only fulfill its promise as the great equalizer—a force that can overcome differences in privilege and background—when we work to ensure that students are in school every day and receive the supports they need to learn and thrive.

At the same time, we know that many students experience tremendous adversity in their lives—including poverty, health challenges, community violence, and difficult family circumstances—that make it difficult for them to take advantage of the opportunity to learn at school.

Students who are chronically absent—meaning they miss at least 15 days of school in a year—are at serious risk of falling behind in school. Yet, for too long, this crisis in our nation's public elementary and secondary schools has not been fully understood. Now, under the Every Student Succeeds Act, many states are reporting chronic absenteeism data annually. This data story, updated with the 2015–16 Civil Rights Data Collection (CRDC), bolsters efforts to reduce and ultimately eliminate chronic absenteeism so that all students have a better chance of reaching their full potential. The data from the CRDC is drawn from nearly every public school in the country and helps us understand who is chronically absent, at what grade levels chronic absenteeism tends to occur, and how chronic absenteeism compares community-by-community and state-by-state.



Note: Data included in this story may differ slightly from other published reports due to certain data decisions. This data story has been updated to incorporate the 2015–16 Civil Rights Data Collection (CRDC).



Our charts are interactive! Hover over or click on chart elements to learn more about specific data points and, where they appear, use buttons to filter charts by select groups.



OVER 7 MILLION

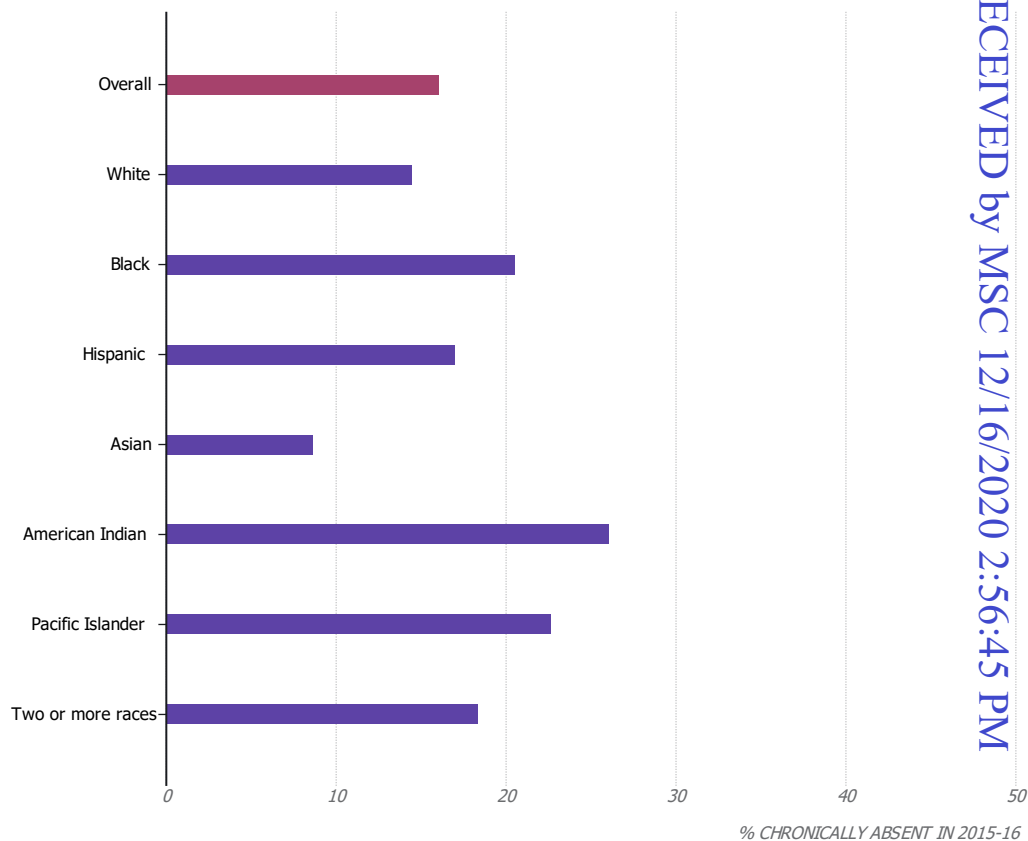
*students missed 15 or more days
of school in 2015-16.*

*That's 16 percent of the student
population— or about 1 in 6
students.*



Let's take a closer look at which groups of students were more likely to be chronically absent. Disparities in chronic absenteeism by key demographic characteristics are evident, though unacceptable levels of chronic absenteeism exist for all students.

While prevalent across the country, students of different races and ethnicities experience chronic absenteeism at different rates.



% CHRONICALLY ABSENT IN 2015-16

The disparities are striking. Consider the relative differences: compared to their white peers, American Indian and Pacific Islander students are over 50 percent more likely to lose three weeks of school or more, black students 40 percent more likely, and Hispanic students 17 percent more likely.

See chronic absenteeism rates for other student groups in the next chart.

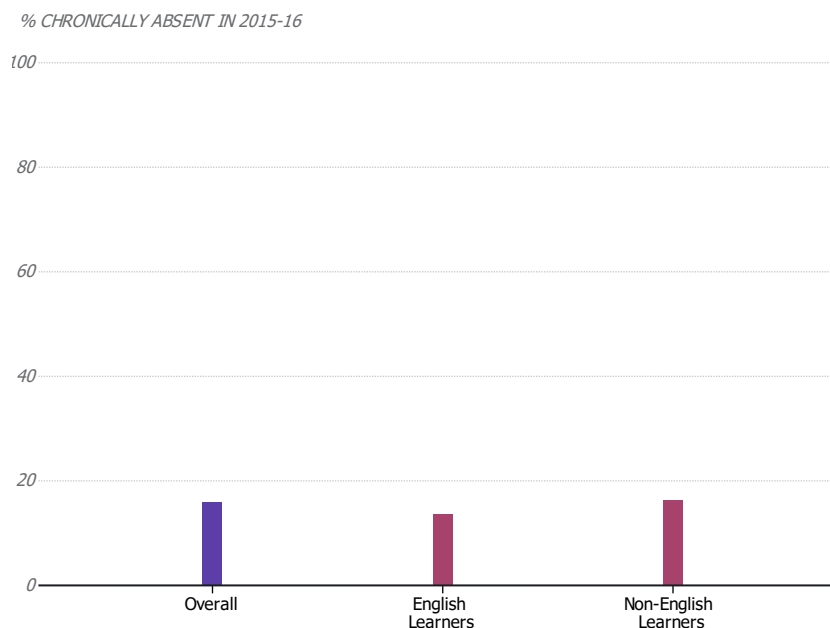
View Chart By:

ENGLISH LEARNER STATUS

DISABILITY STATUS

GENDER

Chronic absenteeism is 15% less likely among English learners than non-English learners.



One notable trend: English learners, who face significant barriers in school and society, are approximately 1.2 times less likely to be chronically absent than their non-English learner peers. Fourteen percent of English learners are chronically absent compared to 16 percent of non-English learners.

The same is not true for students with disabilities who are 1.5 times more likely to be chronically absent than students without disabilities. The Individuals with Disabilities Education Act (IDEA) is intended to ensure all students with disabilities have access to a free, appropriate education yet chronic absenteeism is a barrier that gets in the way of achieving that goal.

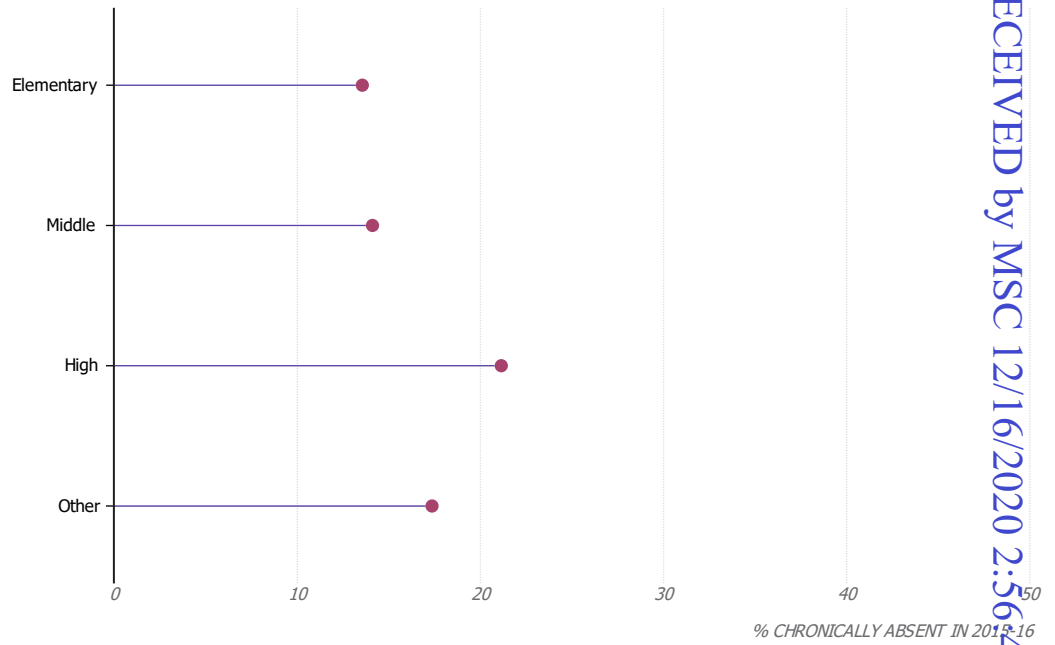
At roughly 16 percent each, male and female students are similarly likely to be chronically absent.

Lost Along the Way

Chronic absenteeism occurs at every grade level but is more prevalent in some grades than others. Chronic absenteeism rates are highest in high school, according to data in the 2015-16 Civil Rights Data Collection. Other research suggests that students in the early elementary grades also experience high rates of chronic absenteeism, which may be masked in analyses that are only available at the school level (as is the case here). Understanding when students are most at risk will help schools and advocates better target interventions to improve student outcomes.



In high school, about 1 in 5 students is chronically absent.



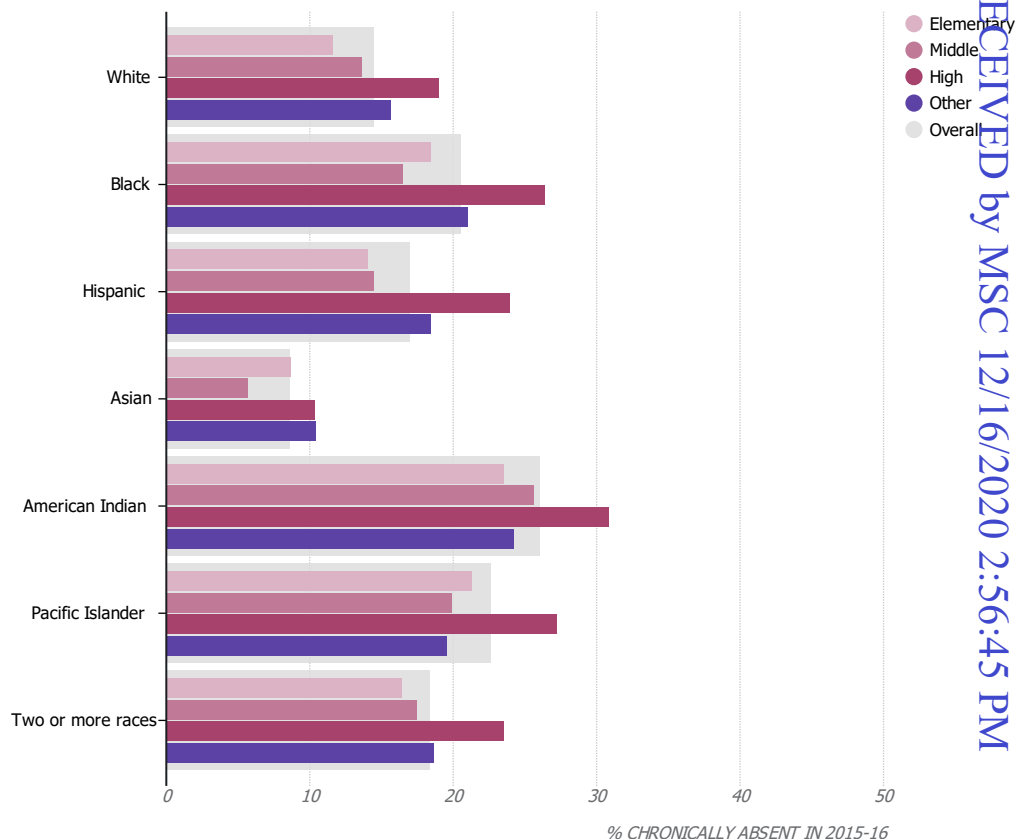
Overall, more than 20 percent of students in high school are chronically absent compared with more than 14 percent of students in middle school. The chronic absenteeism rate was the lowest for elementary school students, at almost 14 percent. For more information on how we defined grade levels, see the data notes.

Next, we looked at how chronic absenteeism varied across grade levels for specific groups of students.

View Chart By:

- RACE & ETHNICITY
- GENDER
- DISABILITY STATUS
- ENGLISH LEARNER STATUS

Chronic absenteeism spikes in high school for students of every race and ethnicity.



For each subgroup of students there is a similar pattern: the likelihood of chronic absenteeism increases as students progress into high school. Notably, the stronger overall attendance observed among English learners dissipates over grade levels, such that they experience higher chronic absenteeism than their non-English learner peers when they reach high school.

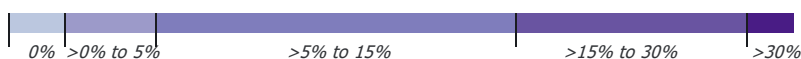
The Geography of Chronic Absenteeism

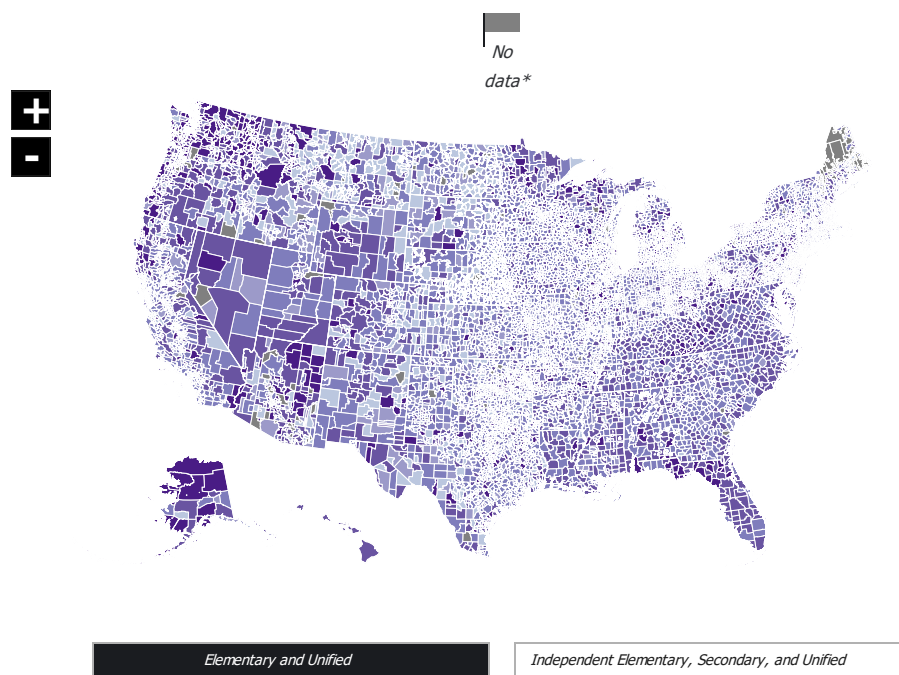
Students experience chronic absenteeism from coast to coast. Disturbingly, approximately 800 school districts reported that more than 30 percent of their students missed at least three weeks of school in 2015-16.



Hover over school districts for information, double-click to zoom in, and select a range from the legend to see specific views of the data. Select the buttons below the map to toggle between percentages for elementary and unified school districts, and independent elementary, secondary, and unified districts.

% of students who were chronically absent(2015–16)





* See map notes.

Why Chronic Absenteeism Matters: What the Research Says

Chronic absenteeism is widespread—about one out of every six students missed three weeks or more of school in 2015-16. That translates to more than 100 million school days lost. Research suggests the reasons for chronic absenteeism are as varied as the challenges our students and families face—including poor health, limited transportation, and a lack of safety—which can be particularly acute in disadvantaged communities and areas of poverty.

Whatever its causes, chronic absenteeism can be devastating:



Chronic absenteeism may prevent children from reaching early learning milestones.

Children who are chronically absent in preschool, kindergarten, and first grade are much less likely to read at grade level by the third grade. Students who cannot read at grade level by the end of third grade are four times more likely than proficient readers to drop out of high school.



Irregular attendance can be a better predictor of whether students will drop out before graduation than test scores.

A study of public school students in Utah found that an incidence of chronic absenteeism in even a single year between 8th and 12th grade was associated with a seven-fold increase in the likelihood of dropping out.



Frequent absences from school can shape adulthood.

High school dropout, which chronically absent students are more likely to experience, has been

linked to poor outcomes later in life, from poverty and diminished health to involvement in the criminal justice system .



The Path Forward: Every Student, Every Day

The very students who tend to face significant challenges and need the most educational supports are often missing the most school.

When our teachers, principals, policymakers, and others have access to robust data on the extent and nature of chronic absenteeism, we are all in a better position to provide students with the supports they need to stem this crisis in our schools.

The 2015 federal education law the Every Student Succeeds Act (ESSA) empowered states to create unique statewide accountability systems. In addition to measurements of annual school performance, ESSA requires states to hold schools accountable for one measure of "school quality or student success (SQSS)" (ESSA 2015, 111-31) and 36 states, the District of Columbia, and Puerto Rico submitted plans to the U.S. Department of Education to use chronic absenteeism as one SQSS indicator . ESSA state plans outline strategies to leverage federal funds to improve attendance through teacher training, improving health services, family engagement, and school climate, important levers for increasing school attendance .

Through an array of resources, the Department of Education is committed to helping ensure all our students, especially the most disadvantaged, are in school every day, including:



Every Student, Every Day: A national initiative to address and eliminate chronic absenteeism.

Supports coordinated community action that addresses the underlying causes of local chronic absenteeism affecting millions of children in our nation's public schools each year.



The Civil Rights Data Collection (CRDC): A biennial survey required by the Department's Office for Civil Rights since 1968.

The CRDC shines a spotlight on data that enable us to understand the successes and challenges of schools and school districts in providing educational opportunity to all of our nation's children.

Data Notes

Data Exclusion Rules

Data included in this story may differ slightly from other published reports due to certain data decisions. For the purposes of these analyses, schools with incomplete or inconsistent data values were excluded. Three percent of schools were excluded for the following reasons:

- 1. The chronic absenteeism question was not applicable to the school (the school must have students enrolled in grades K–12).*
- 2. The school reported incomplete data for enrollment and/or the chronic absenteeism count for at least one race/ethnicity subgroup.*
- 3. The chronic absenteeism count was larger than the K-12 enrollment overall or for at least one race/ethnicity subgroup. Schools with partial or missing data for students with disabilities or English learners were included in all analyses except those that focused on these subgroups.*

Grade Level Definitions

School grade levels were defined using the National Center for Education Statistics (NCES) definition: elementary schools are those in which the lowest grade offered is PK through grade 3 and the highest is PK through grade 8, middle schools are those in which the lowest grade offered is grade 4 through grade 7 and the highest is grade 4 through grade 9, high schools are those in which the lowest grade offered is grade 7 through grade 12 and the highest is grade 12, other schools are those with any other configuration that does not fall within the previous three categories.

Map Notes

Data might be missing from the chronic absenteeism map if:

- 1. A district did not report chronic absenteeism data or the data were inconsistent.*
- 2. A district that reported chronic absenteeism data did not match with the NCES district boundary file.*
- 3. Twenty-five percent of district enrollment was in schools with incomplete or inconsistent data (see Data Exclusion Rules).*

District data displayed on the map may not be based on all schools in the district. All districts with data have complete and consistent data for at least 75 percent of their enrollment.

The available district boundary information for some districts in Vermont reflects the boundaries of a supervisory union rather than a regular school district. As a result, the CRDC data for schools in 254 regular Vermont school districts were aggregated and mapped as part of one of 45 supervisory unions.

Document History

This data story was originally issued with data from the 2013–14 CRDC on June 7, 2016 and edited with revised 2013–14 CRDC data on October 27, 2016. The data story was updated with data from the 2015–16 CRDC in January 2019.

EXHIBIT 4



MISSING SCHOOL, MISSING A HOME: THE LINK BETWEEN CHRONIC ABSENTEEISM, ECONOMIC INSTABILITY AND HOMELESSNESS IN MICHIGAN

NOVEMBER 2018

By Jennifer Erb-Downward and Payton Watt

INTRODUCTION

Attendance is vital to academic success but many children in Michigan are not making it to school. Based on recent estimates, Michigan has the sixth highest statewide chronic absenteeism rate in the country.¹ Close to one out of every six children enrolled in the state's public and charter schools were chronically absent in school year 2016-17, missing 10% or more of school days.² This is cause for alarm for Michigan policymakers, educators and families. Chronically absent students are less likely to meet grade level proficiency standards and are more likely to dropout of school than their peers,³ with impacts seen as early as preschool.⁴ These effects can be lasting. Among third grade students, those who were not chronically absent in kindergarten and first grade were three-and-a-half times more likely to read on grade level than their peers who were chronically absent both years (64% vs. 17% respectively).⁵ The passage of Michigan's third-grade reading law, which mandates retention of students who are a

grade or more behind in reading,⁶ makes these statistics even more pressing. If Michigan is to achieve its goal of becoming a top ten education state in the next decade,⁷ addressing its high rates of chronic absenteeism will be critical.

Efforts to reduce school absences can be strengthened by understanding the characteristics of students most at risk. Race, income and disability status are all associated with elevated rates of chronic absenteeism, but one group stands out in particular: homeless students.⁸ Data shows homelessness is a statewide issue affecting rural, suburban and urban communities alike, which indicates the need for a greater focus on the educational impact of housing instability in Michigan. This brief uses data from the Center for Educational Performance and Information (CEPI) to explore chronic absenteeism and makes policy recommendations to ensure all of the state's children make it to school.

KEY FINDINGS

CHRONIC ABSENTEEISM IS A STATEWIDE ISSUE AFFECTING THE EDUCATION OF MICHIGAN'S SCHOOL CHILDREN.

Roughly one out of every six children (16%) in Michigan was chronically absent in school year 2016-17, and all regions of the state had districts with chronic absenteeism rates of 25% or more.

STUDENTS STRUGGLING WITH ECONOMIC INSTABILITY ARE MUCH MORE LIKELY TO BE CHRONICALLY ABSENT FROM SCHOOL THAN THEIR HIGHER INCOME PEERS.

Economically disadvantaged⁹ students were chronically absent at three times the rate of their higher income peers (24% and 8% respectively).

DISPARITIES IN CHRONIC ABSENTEEISM IN MICHIGAN ARE ALSO PROMINENT BASED ON RACE AND DISABILITY STATUS.

Close to one-third (32%) of African American students were chronically absent. Likewise, students with disabilities also faced significant challenges—roughly one-quarter (24%) were chronically absent from school.

HOMELESS STUDENTS HAVE THE HIGHEST CHRONIC ABSENTEEISM RATE OF ANY GROUP IN MICHIGAN FOR WHICH DATA IS AVAILABLE.

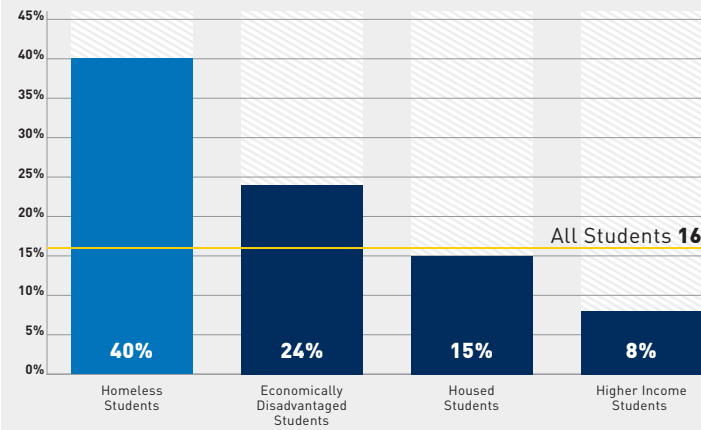
Forty percent of homeless students were chronically absent in school year 2016-17, a rate two-and-a-half the state-wide average and eight percentage points higher than the next highest category reported (African American students).

HOUSING, ECONOMIC STABILITY, AND SCHOOL ATTENDANCE

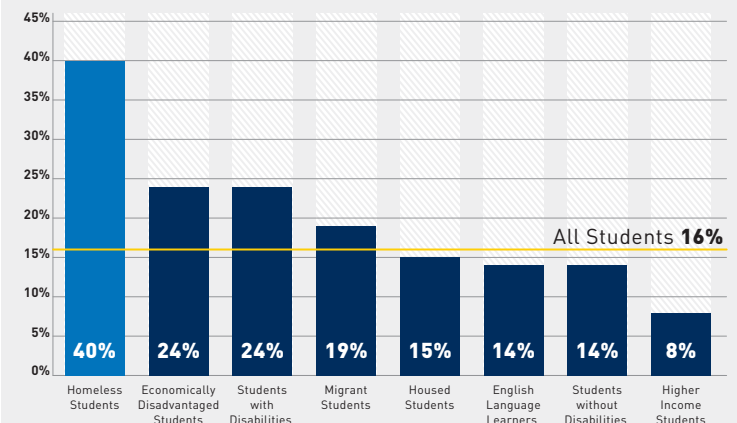
Not all children are at equal risk for chronic absenteeism. In Michigan, the relationship between housing stability, income and school attendance is stark.

- Economically disadvantaged and homeless students together made up just under half (49%) of Michigan's entire student enrollment, yet they represented three-quarters (75%) of all students who were chronically absent from school.
- Homeless students were chronically absent at over two-and-a-half times the rate of their housed peers and more than four times the rate of their higher income peers — who faced neither financial nor housing insecurity.
- In fact, homeless students had the highest chronic absenteeism rate of all subgroups in the state for which data was available. The next highest rate was eight percentage points lower. Among students who self-identified as African American 32% were chronically absent, followed by students with disabilities and economically disadvantaged students at 24%.

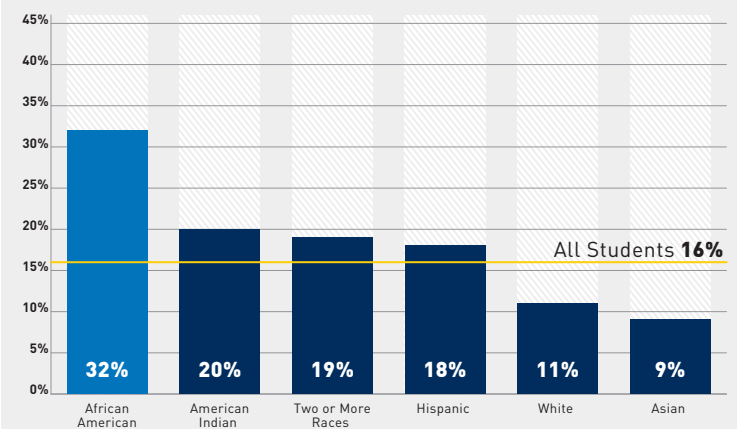
CHRONIC ABSENTEEISM RATE BY HOUSING AND ECONOMIC STABILITY IN MICHIGAN, SCHOOL YEAR 2016-17



CHRONIC ABSENTEEISM RATE HOMELESS STUDENTS VS. ALL OTHER AVAILABLE SUBGROUPS IN MICHIGAN, SCHOOL YEAR 2016-17

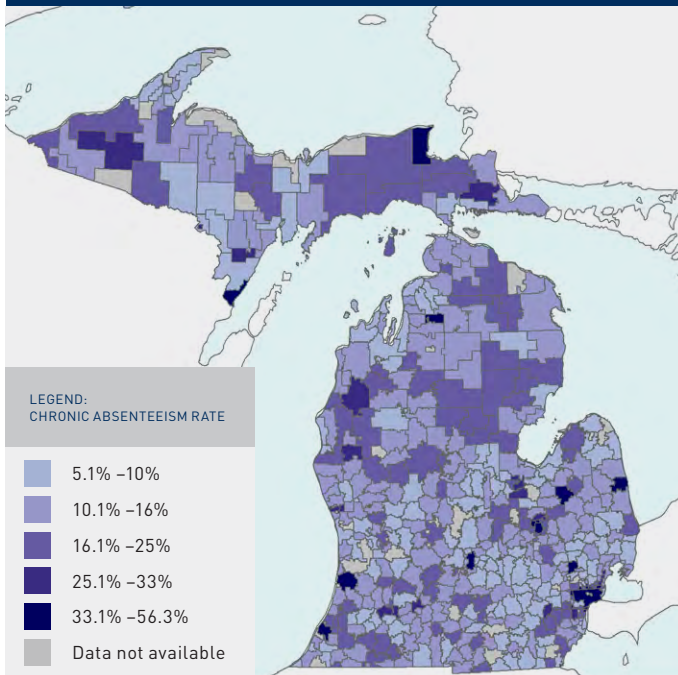


CHRONIC ABSENTEEISM RATE BY RACE AND ETHNICITY IN MICHIGAN, SCHOOL YEAR 2016-17



Source: The Center for Education Performance and Information (CEPI). "Michigan Department of Education Student Counts, Attendance 2016-17". <https://www.mischooldata.org/DistrictSchoolProfiles2/StudentInformation/StudentCounts/Attendance2.aspx> (accessed August 5, 2018).

CHRONIC ABSENTEEISM AMONG ALL STUDENTS BY SCHOOL DISTRICT, SCHOOL YEAR 2016-17



TOP TEN HIGHEST CHRONIC ABSENTEEISM RATES: ALL STUDENTS BY PUBLIC SCHOOL DISTRICT, SCHOOL YEAR 2016-17

SCHOOL DISTRICT	# OF STUDENTS	# OF STUDENTS CHRONICALLY ABSENT	CHRONIC ABSENTEEISM RATE
Detroit Public Schools Community District (Wayne RESA)	48,888	27,533	56%
Ecorse Public Schools (Wayne RESA)	1,343	719	54%
School District of the City of Flint (Genesee ISD)	5,498	2,601	47%
Westwood Heights Schools (Genesee ISD)	1,628	749	46%
Lansing Public School District (Ingham ISD)	11,510	4,853	42%
Westwood Community School District (Wayne RESA)	2,207	917	42%
School District of the City of River Rouge (Wayne RESA)	2,239	927	41%
Menominee Area Public Schools (Menominee ISD)	1,456	599	41%
Benton Harbor Area Schools (Berrien RESA)	2,588	1,059	41%
Alba Public Schools (Traverse Bay Area ISD)	132	53	40%

IMPACTS ACROSS THE STATE

Chronic absenteeism is a statewide issue. While rates vary dramatically by school district, all regions of the state have districts where at least one-quarter of all students enrolled were chronically absent from school.

- On average, 16% of all students in Michigan were chronically absent in 2016-17. Across school districts, however, rates varied by over 50 percentage points from a low of 5% in Ashley Community Schools to a high of 56% in Detroit Public Schools Community District.¹⁰
- In the 10 districts with the highest absenteeism rates in Michigan, 40% or more of all students were chronically absent from school.
- Five of the districts with the highest chronic absenteeism rates were located within Wayne RESA and two were in Genesee ISD. The remaining three districts were distributed across the state.
- Among the 10 districts with the lowest rates, just 5%-6% of students were chronically absent.

TOP TEN LOWEST CHRONIC ABSENTEEISM RATES: ALL STUDENTS BY PUBLIC SCHOOL DISTRICT, SCHOOL YEAR 2016-17

SCHOOL DISTRICT	# OF STUDENTS	# OF STUDENTS CHRONICALLY ABSENT	CHRONIC ABSENTEEISM RATE
Ashley Community Schools (Graftiot-Isabella RESD)	272	14	5%
Midland Public Schools (Midland County Educational Service Agency)	7,978	414	5%
Pewamo-Westphalia Community Schools (Clinton County RESA)	651	34	5%
Troy School District (Oakland Schools)	13,185	694	5%
St. Johns Public Schools (Clinton County RESA)	2,995	158	5%
Rochester Community School District (Oakland Schools)	15,389	819	5%
Northville Public Schools (Wayne RESA)	7,492	402	5%
North Muskegon Public Schools (Muskegon Area ISD)	1,046	57	5%
Dexter Community School District (Washtenaw ISD)	3,649	199	5%
Harbor Beach Community Schools (Huron ISD)	505	28	6%

Source: The Center for Education Performance and Information (CEPI). "Michigan Department of Education Student Counts, Attendance 2016-17". <https://www.mischooldata.org/DistrictSchoolProfiles2/StudentInformation/StudentCounts/Attendance2.aspx> (accessed August 5, 2018).

CHRONIC ABSENTEEISM CAN BE REDUCED

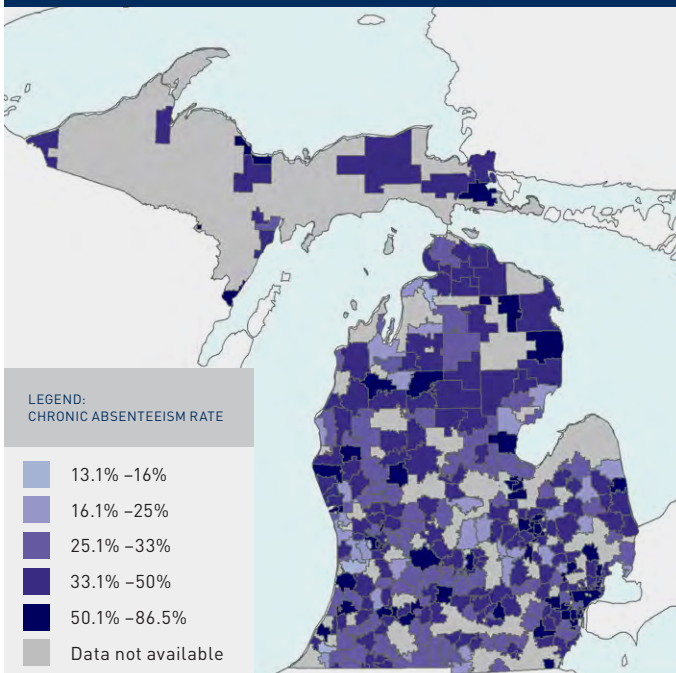
Chronic absenteeism varied greatly by district for homeless students. This variability presents an opportunity to identify what is working in some school districts to support homeless student attendance.

- While the state chronic absenteeism rate for homeless students is 40%, this rate by school district ranged from a low of 13% in Berrien Springs Public Schools to a high of 86% in Detroit Public Schools Community District.¹¹
- In four school districts, homeless students were chronically absent at rates lower than the statewide average for housed students (16%). These districts, Berrien Springs Public Schools, Boyne City Public Schools, Jenison Public Schools, and Hamilton Community Schools,

TOP TEN HIGHEST CHRONIC ABSENTEEISM RATES AMONG HOMELESS STUDENTS BY PUBLIC SCHOOL DISTRICT, SCHOOL YEAR 2016-17

SCHOOL DISTRICT	# OF STUDENTS	# OF STUDENTS CHRONICALLY ABSENT	CHRONIC ABSENTEEISM RATE	ALL STUDENT CHRONIC ABSENTEEISM RATE
Detroit Public Schools Community District (Wayne RESA)	918	794	86%	56%
School District of the City of River Rouge (Wayne RESA)	60	43	72%	41%
School District of the City of Lincoln Park (Wayne RESA)	68	48	71%	23%
Wayne-Westland Community School District (Wayne RESA)	260	179	69%	24%
Southgate Community School District (Wayne RESA)	54	37	69%	21%
Romeo Community Schools (Macomb ISD)	44	30	68%	12%
Lansing Public School District (Ingham ISD)	788	532	68%	42%
School District of the City of Flint (Genesee ISD)	567	380	67%	47%
Redford Union Schools District #1 (Wayne RESA)	93	62	67%	36%
Orchard View Schools (Muskegon Area ISD)	70	46	66%	31%

CHRONIC ABSENTEEISM AMONG HOMELESS STUDENTS BY SCHOOL DISTRICT, SCHOOL YEAR 2016-17



TOP TEN LOWEST CHRONIC ABSENTEEISM RATES AMONG HOMELESS STUDENTS BY PUBLIC SCHOOL DISTRICT, SCHOOL YEAR 2016-17

SCHOOL DISTRICT	# OF STUDENTS	# OF STUDENTS CHRONICALLY ABSENT	CHRONIC ABSENTEEISM RATE	ALL STUDENT CHRONIC ABSENTEEISM RATE
Berrien Springs Public Schools (Berrien RESA)	206	27	13%	7.11%
Boyne City Public Schools (Charlevoix-Emmet ISD)	75	10	13%	6%
Jenison Public Schools (Ottawa Area ISD)	74	10	14%	7%
Hamilton Community Schools (Ottawa Area ISD)	73	10	14%	*
Hudsonville Public School District (Ottawa Area ISD)	88	15	17%	*
Marlette Community Schools (Sanilac ISD)	97	17	18%	12%
Deckerville Community School District (Sanilac ISD)	55	10	18%	14%
Manton Consolidated Schools (Wexford-Missaukee ISD)	63	12	19%	14%
Hillsdale Community Schools (Hillsdale ISD)	121	24	20%	10%
Camden-Frontier Schools (Hillsdale ISD) **	89	18	20%	11%
Dearborn Heights School District #7 (Wayne RESA) **	89	18	20%	17%

* The total number of chronically absent students was missing or redacted for "all students" in the original data. The percent is, therefore, not listed.

** Two schools were tied for 10th in the Top Ten Lowest Chronic Absenteeism Rates. Eleven schools are, therefore, listed in the "Top Ten Lowest Chronic Absenteeism Rates Among Homeless Students" table.

Source: The Center for Education Performance and Information (CEPI). "Michigan Department of Education Student Counts, Attendance 2016-17". <https://www.mischooldata.org/DistrictSchoolProfiles2/StudentInformation/StudentCounts/Attendance2.aspx> [accessed August 5, 2018].

highlight the fact that chronic absenteeism is not inevitable for even the most vulnerable students.

- School districts where homeless students struggled with attendance were not always the same districts where all students struggled. Only four of the 10 school districts with the highest chronic absenteeism rates for homeless students were also among the top 10 list for all students. Districts such as Romeo Community Schools, where 68% of homeless students were chronically absent compared to 12% of all students, highlight why it is important to examine trends by economic and housing stability separately.
- Despite promising attendance trends in some districts for homeless students, overall more attention is needed to help get this highly vulnerable group of students to school. In one-quarter of all public and charter schools for which data were available, half or more of homeless students were chronically absent in school year 2016-17.¹²

POLICY IMPLICATIONS

Chronic absenteeism must be reduced in order to make long-term improvements in reading and math proficiency and graduation in Michigan. While this issue impacts all children, recognizing the greater risk that economically disadvantaged and homeless students face is key to the development of effective attendance policies and programs. Economically disadvantaged and homeless students together account for close to half of all students in Michigan, and make up 75% of all students chronically absent in the state. Unless Michigan addresses the impacts of economic and housing insecurity on attendance, it will not see significant improvement in academic outcomes.

RECOMMENDATIONS

ENSURE THAT ATTENDANCE PROGRAMS AND POLICIES MEET THE NEEDS OF ALL STUDENTS INCLUDING THOSE EXPERIENCING HOUSING AND ECONOMIC INSTABILITY

Given the stark differences that exist in chronic absenteeism rates by the level of housing and economic instability a child faces, it is critical that programs to improve attendance are designed in ways that address barriers specific to children and families facing these challenges.

LEARN FROM SUCCESSFUL ATTENDANCE INTERVENTIONS BOTH WITHIN THE STATE AND NATIONALLY

While chronic absenteeism data for Michigan shows an overall need for improvement in attendance among students, it also highlights areas of success. Many school districts have already implemented successful attendance programs in their districts. These districts are a valuable asset to the state as a whole, and can share what they have learned about reducing chronic absenteeism. Likewise, there are many national examples of successful attendance programs which can serve as models for Michigan.¹³

OPT INTO MiDataHub

MiDataHub is a statewide initiative to improve the management and usability of school data. Opting into the initiative provides schools with streamlined access to previously disconnected sources of data which enables improved identification and outreach to struggling students. Presently, only 60% of Michigan school districts have signed up to participate in MiDataHub. Efforts are underway to increase awareness of the free program and to encourage universal participation. School districts can opt into the program via <https://midatahub.com/getting-started/district-application-information/>.

ADOPT REAL-TIME ATTENDANCE TRACKING TOOLS AT SCHOOLS STATEWIDE

Early identification and outreach to students and families is vital for improving school attendance. It is easy, however, to miss early patterns of school absence that place students at risk for chronic absenteeism. Real-time attendance tracking tools make earlier identification easier, and are available to both teachers and administrators for free through Michigan DataHub and organizations such as Attendance Works.¹⁴

USE AVAILABLE DATA TO IDENTIFY AND PRIORITIZE SCHOOL DISTRICTS WITH THE GREATEST NEED

Geographically visualized and interactive data on chronic absenteeism at the school district (and sometimes school) level is now available publicly and can be a valuable tool for state and local planning. Data broken out by race/ethnicity and disability status can be found at: The Hamilton Project: Chronic Absence Across the United States.¹⁵ Data broken out by housing and economic stability in Michigan can be found at: Mapping the Impact of Housing and Economic Instability on Chronic Absenteeism in the State of Michigan.¹⁶

ENDNOTES

- 1 Brookings. "The Hamilton Project: Chronic Absence across the United States, 2015-16 School Year," http://www.hamiltonproject.org/charts/chronic_absence_across_the_united_states [accessed October 2, 2018].
- 2 The Center for Education Performance and Information (CEPI). "Michigan Department of Education: MI School Data, Student Counts," <https://www.mischooldata.org/DistrictSchoolProfiles2/StudentInformation/StudentCounts/Attendance2.aspx> [accessed September, 12, 2018].
- 3 U.S. Department of Education. "Chronic Absenteeism in the Nation's Schools: An Unprecedented Look at a Hidden Crisis," <https://www2.ed.gov/datastory/chronicabsenteeism.html> [accessed October 2, 2018].
- 4 Ehrlich, Stacy B. et al. "Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences, University of Chicago", Consortium on Chicago School Research, May 2014.
- 5 Applied Survey Research. "Attendance in Early Elementary Grades: Association with Student Characteristics, School Readiness and Third Grade Outcomes", May 2011, <http://www.attendanceworks.org/wp-content/uploads/2017/06/ASR-Mini-Report-Attendance-Readiness-and-Third-Grade-Outcomes-7-8-11.pdf> [accessed Oct. 16, 2018].
- 6 Michigan Education Association. "Learn What's in the New Third Grade Reading Law", <https://mea.org/learn-whats-in-the-new-third-grade-reading-law/> [accessed October 15, 2018].
- 7 The Education Trust-Midwest. "Launch Michigan: Make Michigan a Top Ten Education State," <https://midwest.edtrust.org/press-release/launch-michigan-make-michigan-a-top-ten-education-state/> [accessed October 15, 2018].
- 8 The McKinney-Vento Act defines homeless children and youths as those who "lack a fixed, regular, and adequate nighttime residence" this includes children and youths who due to loss of housing or economic hardship are living in hotels, motels, trailer parks, camping grounds, another person's housing, emergency or transitional shelters or any place not meant for human habitation (such as cars, public spaces, or abandoned buildings).
- 9 Economically Disadvantaged Students are those eligible for free- or reduced-price meals under the National School Lunch program, are in households receiving food (SNAP) or cash (TANF) assistance, are eligible under Medicaid, are homeless, are migrant, or are in foster care.
- 10 Charter and non-traditional school districts were excluded from the top ten list to maximize comparability across districts. In 41 school districts, the total number of chronically absent students was either missing or suppressed to protect student privacy. A total of 497 public school districts were included in the analysis.
- 11 Charter and non-traditional school districts were excluded from the top ten list to maximize comparability across districts. Additionally, school districts where the total number of chronically absent students was either missing or suppressed to protect student privacy were excluded leaving a total of 343 public school districts.
- 12 School districts where the total number of chronically absent students was either missing or suppressed to protect student privacy were excluded. A total of 393 charter and public schools were included in the calculation.
- 13 Attendance Works. "3 Tiers of Intervention," <http://www.attendanceworks.org/chronic-absence/addressing-chronic-absence/3-tiers-of-intervention/> [accessed October 8, 2018].
- 14 Attendance Works. "Resources: Data Tools," <http://www.attendanceworks.org/resources/data-tools/> [Accessed October 8, 2018].
- 15 Brookings. "The Hamilton Project: Chronic Absence across the United States, 2015-16 School Year," http://www.hamiltonproject.org/charts/chronic_absence_across_the_united_states [accessed October 2, 2018].
- 16 www.poverty.umich.edu/missing-school-missing-a-home

EXHIBIT 5



CHRONIC ABSENTEEISM AND STUDENT ATTENDANCE



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OUR THANKS TO

We gratefully acknowledge the financial support of the Skillman Foundation and the Kaplan Collaborative at Wayne State University's College of Education. We especially would like to thank the steady guidance and encouragement of Siobhan O'Laoire, our program officer at the Skillman Foundation. We would also like to thank Dr. William Hill, our assistant dean. We express our sincere appreciation for the feedback, support, and engagement of Katie Rae Stolper and Stephanie Young of the Community Education Commission; Molly Sweeney, Jamila Martin, and the leadership team of 482Forward; Reverend Larry Simmons, Christine Bell, and the steering committee of Every School Day Counts Detroit; Cindy Eggleton of 313Reads; and a special shout out to Terry Whitfield of the Skillman Foundation. Thanks to Elizabeth Orr Jones, who designed this report.

RESEARCH NOTE

This research result used data collected and maintained by the Michigan Department of Education (MDE) and Michigan's Center for Educational Performance and Information (CEPI). Results, information, and opinions solely represent the analysis, information, and opinions of the authors and are not endorsed by – or reflect the views or positions of – grantors, MDE, and CEPI or any employee thereof.

WE WANT TO HEAR FROM YOU

This report provides an overview of student exit, mobility, and absenteeism in Detroit. Our future reports will go deeper into these issues to explore questions that community members need answered to contribute to educational improvement in Detroit. We will provide our interpretation of this research, based on data, studies from other cities, and the historical and contemporary Detroit context. But we are not the only experts. Detroit students, parents, educators, and advocates are in the best position to help us understand what our findings mean and how to act on them in policy and practice. To that end, we want to hear from you. Please go to <http://tinyurl.com/WSU-education-research-survey> to give us your feedback.

REFERENCE FOR THIS REPORT

Lenhoff, S. W., Pogodzinski, B., Singer, J., & Cook, W. (2019). Student Exit, Mobility, and Attendance in Detroit. Retrieved from Wayne State University website: go.wayne.edu/DetEdResearch

Research has shown that chronic absenteeism, or missing 10% or more days of school, is associated with lower student academic achievement and graduation rates at the student level (Allensworth & Easton, 2007; Gershenson, Jacknowitz, & Brannegan, 2017; Gottfried, 2014; London, Sanchez, & Castrechini, 2016; Romero & Lee, 2007), and chronic absenteeism disrupts the learning environment at the classroom level impacting the outcomes of students who are not chronically absent (Balfanz & Byrnes, 2013; Epstein & Sheldon, 2002; Foy, 2005; Gottfried, 2014; Hartman, 2002). Furthermore, school systems risk losing funding when daily attendance drops below a specific level. Reducing chronic absenteeism is paramount not only in order improve educational and life outcomes for students, but because it is now part of the State accountability system in compliance with the federal Every Student Succeeds Act. Therefore, schools that fail to effectively address chronic absenteeism face possible State interventions.

We conceptualize the predictors of chronic absenteeism as encompassing an intersection between student-, school-, and community-level factors. In addition to structural issues related to family poverty (e.g., access to stable housing or transportation), student-level factors such as family structure (e.g., single family homes), parental engagement in a student's academic life, and cognitive ability and social development have been found to be associated with chronic absenteeism (Alexander, Entwistle, & Horsey, 1997; Bimler & Kirkland, 2001; Catsambis & Beveridge, 2001; Corville-Smith, Ryan, Adams, & Dalicandro, 1998; Dahl, 2016; Jeynes, 2003; Reschly & Christenson, 2006; Romero & Lee, 2008; Sheldon, 2007). School-level factors such as the effectiveness of teachers and leaders can directly influence student attendance (Bryk, Sebring, Allensworth, Easton, & Luppescu, 2010; Gershenson, 2016), while other factors can mediate student- or environmental-level factors, such as providing school-based transportation (Gottfried, 2017) or school-based health services (Tinkelman & Schwartz, 2004). Community or environmental factors contribute to chronic absenteeism primarily through their association with student- and school-level factors, and often relate to public safety, public transportation, health care, and other factors associated with poverty (e.g., housing) (Bell, Rosen, & Dynlacht, 1994; Epstein & Sheldon, 2002).

METHODOLOGY

Leveraging our data set which contains student-level administrative data from the State of Michigan, combined with publicly available data regarding community characteristics, we sought to describe the extent and distribution of student chronic absence across schools in the City of Detroit during the 2017-18 school year. Through t-tests and nonparametric tests of differences in means, we first sought to identify variation in student chronic absence across various student and school classifications. Given the hierarchical nature of the data (students nested within schools), we then estimated a series of multi-level logistic regressions to further identify these associations while controlling for other variables. The first model that we estimated included all students (K-12) enrolled in any school in Detroit (charter or DPSCD) during the 2017-18 school year. Because the second model included an indicator for students' prior year chronic absence, it only includes students who were enrolled in a Detroit school during 2016-17 and 2017-18. Our final model included the school-level average math achievement z-score, thus reducing the sample to only include students and schools that took the M-STEP/MME during the 2017-18 school year.

Figure 1: Chronic Absenteeism in Metro Detroit, 2010-11 to 2017-18

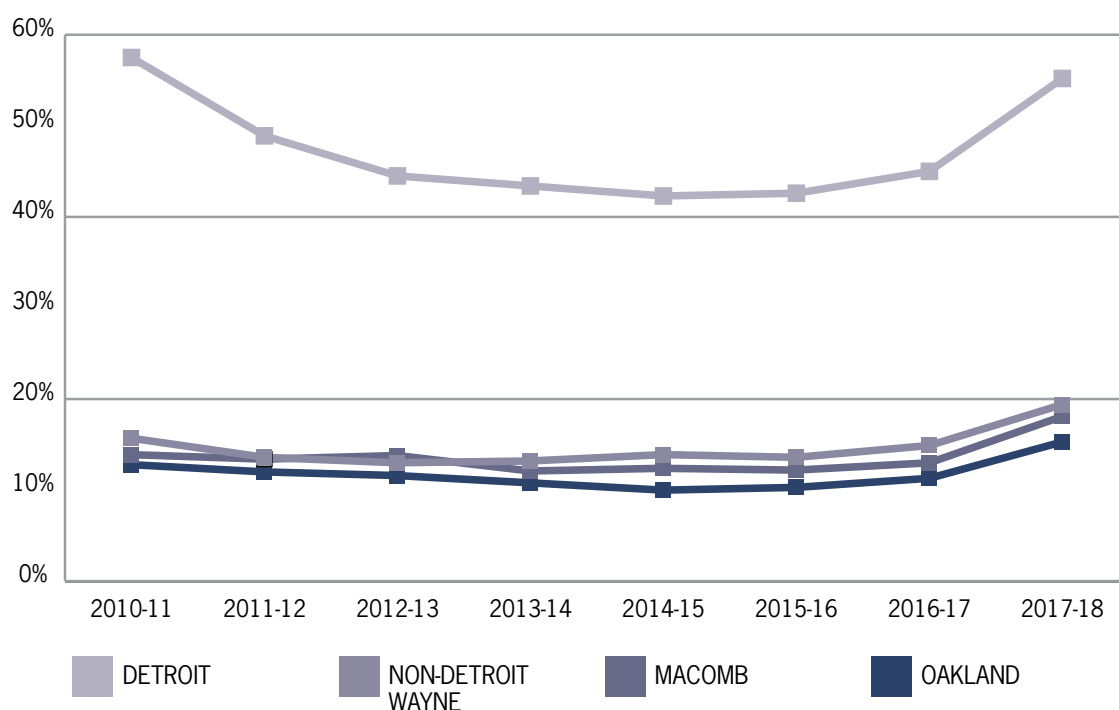
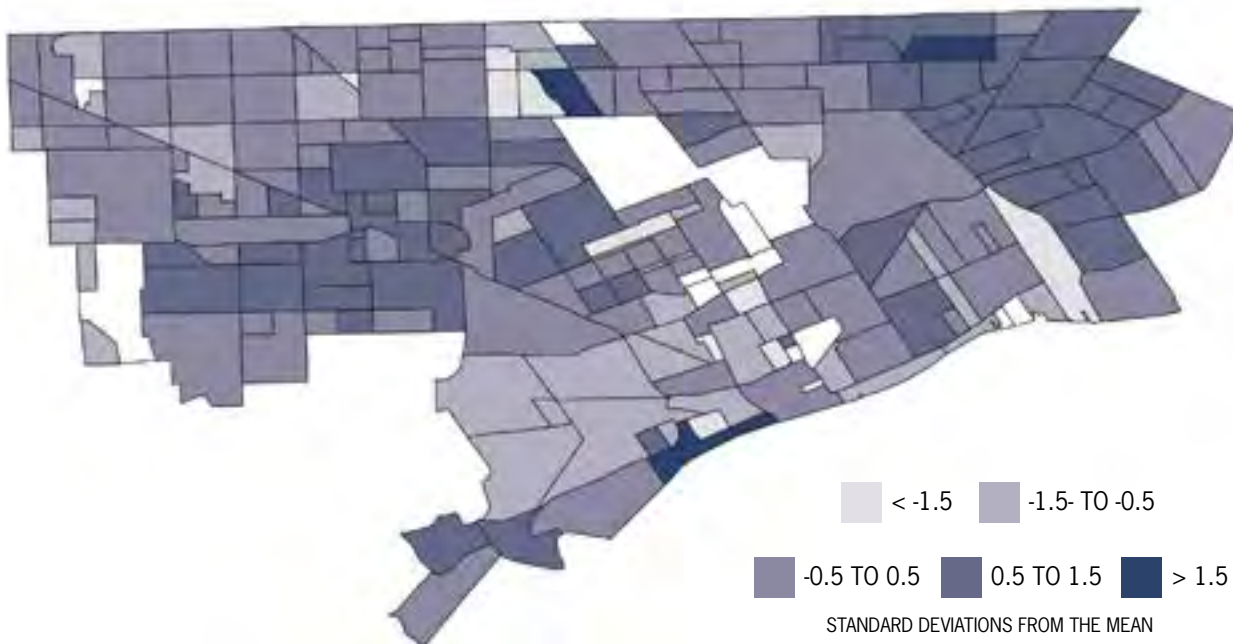


Figure 2: Percentage of Chronically Absent Students by Neighborhood



CHRONIC ABSENTEEISM IN DETROIT

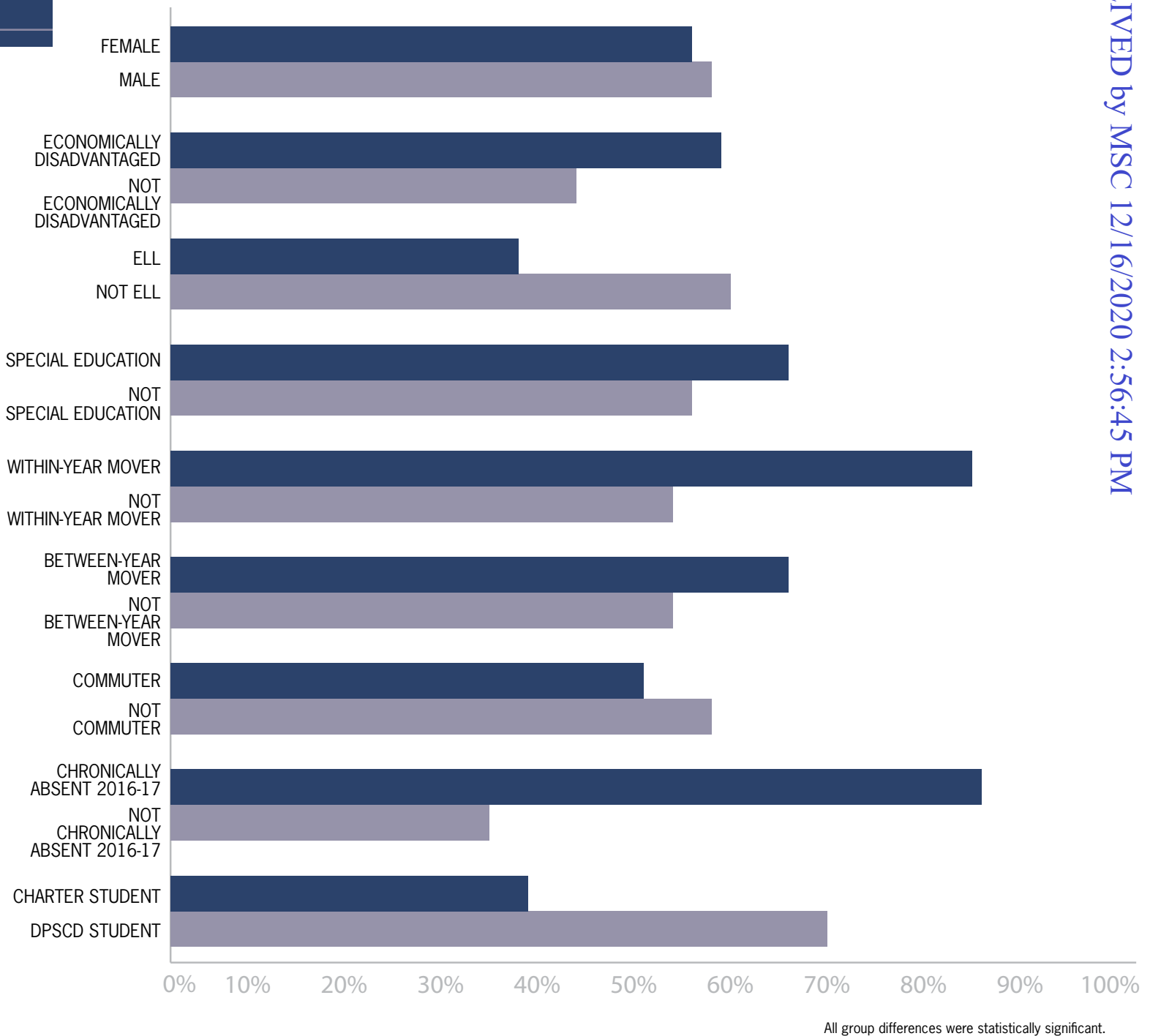
The chronic absence rates across schools in Detroit are some of the highest in the country (Office of Civil Rights, 2016), contributing to poor academic outcomes and disrupted learning environments across schools in the city. Over 40% of students in Detroit schools were classified as chronically absent in each of the eight years of our analysis, and in 2017-18 just over 55% of Detroit school students were chronically absent. Additionally, the chronic absence rate for students in Detroit was nearly 30 percentage points higher than for suburban school students.

Similar to student mobility rates within Detroit, chronic absence was more prevalent in certain sections of the city. For example, the neighborhoods of Pulaski and Mount Olivet in the northeast part of the city had a combined student population of 1,054, and approximately 67% of those students were chronically absent in 2017-18. Conversely, in the Southwest Detroit neighborhood of Springwells, 39% of the nearly 3,000 students were chronically absent.

67%
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CHRONICALLY ABSENT
IN PULASKI/MOUNT
OLIVET, WHILE
39%
WERE CHRONICALLY
ABSENT IN
SPRINGWELLS.

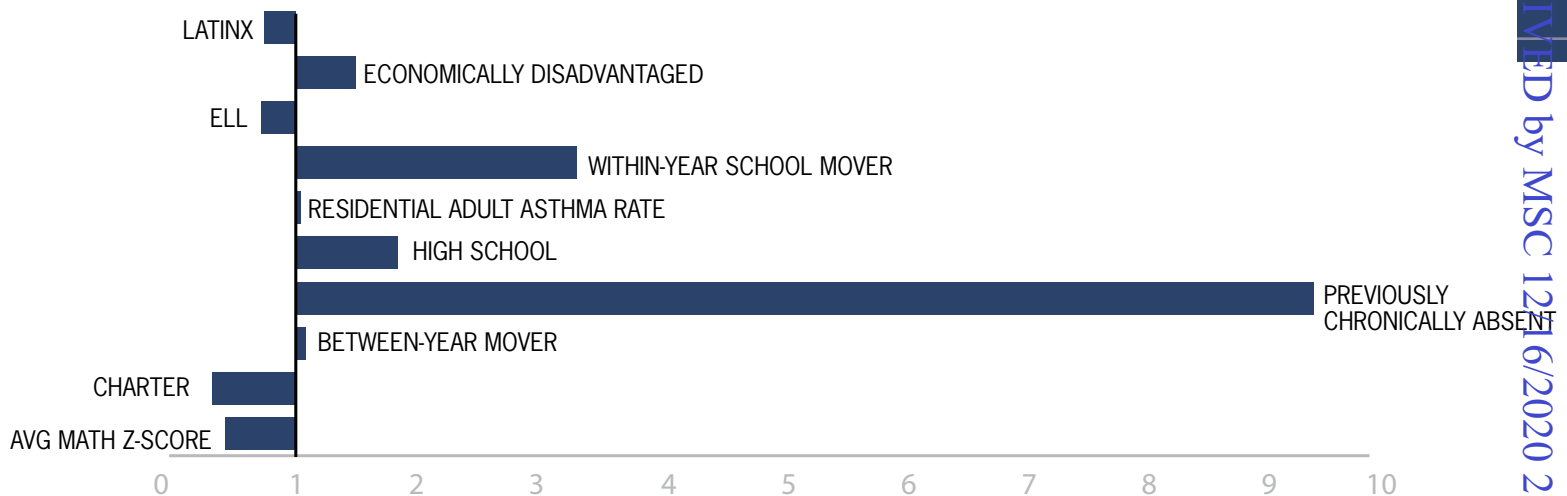
FACTORS ASSOCIATED WITH CHRONIC ABSENCE

Student chronic absence varied across students based on specific characteristics, though chronic absence was high for all groups. For

Figure 3: Percentage of Students Who Were Chronically Absent by Group

example, 58% of Black students were chronically absent in 2017-18, statistically significantly higher than all other racial/ethnic groups except Asians. Although all the differences were statistically significant across other student classifications, a few specifically stand out given the magnitude of the difference. Eighty-three percent of students who changed schools during the school year were chronically absent, while 52% of students who

Figure 4: Odds Ratios for Chronic Absence



Note. This is a graphical representation of the odds ratios for being chronically absent in 2017-18. Only the statistically significant variables ($p < 0.05$) from Model 3 are displayed. Full regression output for Models 1, 2, and 3 can be found in the technical appendix. Race variables are in comparison to Black students.

were not mobile during the year were chronically absent. Additionally, the chronic absence rate for students who were chronically absent the previous year (2016-17) was 51 percentage points higher than those that were not chronically absent in the previous year. Finally, 68% of DPSCD students were chronically absent, compared to 37% of students who were enrolled in a charter school.

Controlling for other variables through regression analysis, Latinx students were 1.4 times less likely to be chronically absent compared to Black students. While economically disadvantaged students and special education students were more likely to be chronically absent, ELL students were less likely to be chronically absent. Notably, students who changed schools during the school year (i.e., within-year school mover) were over 3.5 times more likely to be chronically absent. Although a smaller association, moving to the school between years (i.e., between-year-mover) was associated with 1.07 higher odds of being chronically absent. Additionally, students who were “commuters” (i.e., traveled greater than 2.5 miles to school if in elementary/ junior high or greater than 3.5 miles for high school) were slightly more likely to be chronically absent.

Students who lived in communities with higher rates of asthma had slightly higher odds of chronic absence compared to students in communities with lower rates of asthma. Grade level also showed interesting associations with chronic absence - upper elementary (grades 3-5) and junior high (grades

6-8) students had lower odds of being chronically absent compared to lower elementary students (K-2), while the odds of a high school student being chronically absent was 1.2 times that of a lower elementary student. Finally, if a student was chronically absent in 2016-17, it was associated with 9.5 times higher odds that a student was chronically absent in 2017-18.

NOTABLY,
STUDENTS WHO
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DURING THE
SCHOOL YEAR**
(I.E., WITHIN-YEAR
SCHOOL MOVER)
WERE
**OVER 3.5
TIMES**
MORE LIKELY TO BE
CHRONICALLY ABSENT.

At the school level, higher rates of school stability (i.e., low rates of student transfers) was associated with a much lower likelihood of student-level chronic absence. Additionally, on average, a student in a charter school was nearly 6 times less likely to be chronically absent compared to a student in a DPSCD school, holding all other variables constant. When including school-level math achievement in the model, higher average student achievement was associated with a lower likelihood of student-level chronic absence.

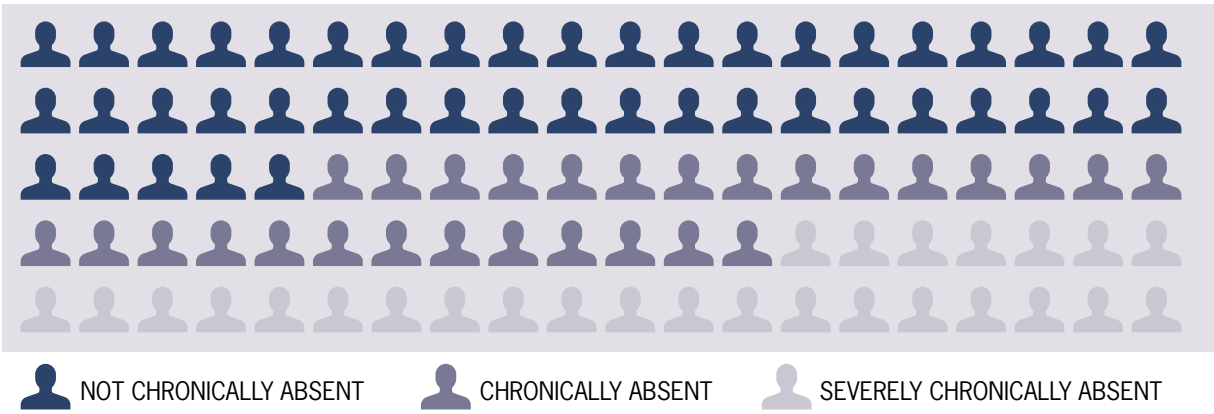
ATTENDANCE RATE

It is important to note that although students are categorized as being chronically absent if they miss at least 10% of possible school days, there was a wide range of missed days beyond the 10% minimum threshold. For example, approximately 27% of Detroit school students attended 80% or fewer days, with nearly 7% (~5,700 student) only attending school 60% or fewer of the possible days. Student attendance was also not evenly distributed across schools. For example, only about 30% of schools had a student attendance rate of 90% or better. Conversely, nearly 10% of schools had a student attendance rate of 70% or lower. Forty-five percent of students had attendance rates above 90%, but 28% of Detroit students had attendance rates between 80 and 90%, making them chronically absent, and 27% had attendance rates lower than 89%, making them severely chronically absent, as shown in Figure 5.

Table 1: Student and Average School Attendance Rates

Attendance Rate (% Days Attended)	Students in Attendance Rate Range N (% of total)	Schools in Average Attendance Rate Range N (% of total)
90+	36,963 (44.91%)	55 (29.57%)
80-90	22,983 (27.93%)	81 (43.55%)
70-80	11,075 (13.46%)	32 (17.20%)
60-70	5,523 (6.71%)	10 (5.38%)
50-60	2,639 (3.21%)	5 (2.69%)
Under 50	3,119 (3.79%)	3 (1.61%)

Figure 5: Percentage of Students Chronically Absent



SUMMARY

Chronic absence has been a persistent problem for students across schools in Detroit, and this report sought to identify the extent of chronic absence across the city and identify student and school factors associated with chronic absence. Our analysis has shown that in addition to specific student-level predictors of chronic absenteeism (e.g., Black, special education, and lower achieving students were more likely to be chronically absent), there are key school and community factors which were associated with student chronic absence. At the same time, such findings suggest the need for greater attention to school-level factors which mediate student- and community-level influences on student attendance. Below we offer the key takeaways, policy implications, and direction for future research.

KEY TAKEAWAYS

- Approximately 27% of Detroit students attended 80% or fewer days of school.
- Rates of student chronic absence varied significantly across geographic communities in Detroit.
- Students who were new to a school either through within-year or between-year mobility were more likely to be chronically absent.
- School factors matter - a student was less likely to be chronically absent if they attended a school with less student mobility and higher average math scores.





POLICY IMPLICATIONS

- In addition to broad measures aimed at reducing chronic absence, continued attention to students with lower attendance rates is warranted, as large percentages of students missed significantly more days than the 10% threshold to be classified as chronically absent.
- In addition to school-level interventions, community based interventions should be explored to address wide discrepancies in the distribution of student attendance across geographic sections of the city.
- Such community based interventions should consider the structural and social dynamics of communities which contribute to student chronic absence; such as health factors, transportation, school location, and community cohesion.
- Chronic absence is related to other structural issues across schools in Detroit, such as the high rates of student mobility in the city. Comprehensive strategies should be developed and implemented to reduce student mobility and improve the schooling experience for all students, and schools should make a plan to support new students early, to prevent chronic absenteeism.



FUTURE RESEARCH

- What are the associations between community characteristics and the characteristics of schools in those communities which may jointly mediate student attendance?
- How do the associations between student-, school-, and community characteristics and student attendance vary by tiers of student attendance?
- What is the association between various indicators of school quality and student attendance?

EXHIBIT 6

Student absenteeism

Who misses school and how missing school matters for performance

Report • By [Emma García](#) and [Elaine Weiss](#) • September 25, 2018

Summary

A broader understanding of the importance of student behaviors and school climate as drivers of academic performance and the wider acceptance that schools have a role in nurturing the “whole child” have increased attention to indicators that go beyond traditional metrics focused on proficiency in math and reading. The 2015 passage of the Every Student Succeeds Act (ESSA), which requires states to report a nontraditional measure of student progress, has codified this understanding.

The vast majority of U.S. states have chosen to comply with ESSA by using measures associated with student absenteeism—and particularly, chronic absenteeism. This report uses data on student absenteeism to answer several questions: How much school are students missing? Which groups of students are most likely to miss school? Have these patterns changed over time? And how much does missing school affect performance?

Data from the National Assessment of Educational Progress (NAEP) in 2015 show that about one in five students missed three days of school or more in the month before they took the NAEP mathematics assessment. Students who were diagnosed with a disability, students who were eligible for free lunch, Hispanic English language learners, and Native American students were the most likely to have missed school, while Asian students were rarely absent. On average, data show children in 2015 missing fewer days than children in 2003.

Our analysis also confirms prior research that missing school hurts academic performance: Among eighth-graders, those who missed school three or more days in the month before being tested scored between 0.3 and 0.6 standard deviations lower (depending on the number of days missed) on the 2015 NAEP mathematics test than those who did not miss any school days.

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Introduction and key findings

Education research has long suggested that broader indicators of student behavior, student engagement, school climate, and student well-being are associated with academic performance, educational attainment, and with the risk of dropping out.¹

One such indicator—which has recently been getting a lot of attention in the wake of the passage of the Every Student Succeeds Act (ESSA) in 2015—is student absenteeism. Absenteeism—including chronic absenteeism—is emerging as states’ most popular metric to meet ESSA’s requirement to report a “nontraditional”² measure of student progress (a metric of “school quality or student success”).³

Surprisingly, even though it is widely understood that absenteeism has a substantial impact on performance—and even though absenteeism has become a highly popular metric under ESSA—there is little guidance for how schools, districts, and states should use data about absenteeism. Few empirical sources allow researchers to describe the incidence, trends over time, and other characteristics of absenteeism that would be helpful to policymakers and educators. In particular, there is a lack of available evidence that allows researchers to examine absenteeism at an aggregate national level, or that offers a comparison across states and over time. And although most states were already gathering aggregate information on attendance (i.e., average attendance rate at the school or district level) prior to ESSA, few were looking closely into student-level attendance metrics, such as the number of days each student misses or if a student is chronically absent, and how they mattered. These limitations reduce policymakers’ ability to design interventions that might improve students’ performance on nontraditional indicators, and in turn, boost the positive influence of those indicators (or reduce their negative influence) on educational progress.

In this report, we aim to fill some of the gaps in the analysis of data surrounding absenteeism. We first summarize existing evidence on who misses school and how absenteeism matters for performance. We then analyze the National Assessment of Educational Progress (NAEP) data from 2003 (the first assessment with information available for every state) and 2015 (the most recent available microdata). As part of the NAEP assessment, fourth- and eighth-graders were asked about their attendance during the month prior to taking the NAEP mathematics test. (The NAEP assessment may be administered anytime between the last week of January and the end of the first week of March, so “last month” could mean any one-month period between the first week of January and the first week of March.) Students could report that they missed no days, 1–2 days, 3–4 days, 5–10 days, or more than 10 days.

We use this information to describe how much school children are missing, on average; which groups of children miss school most often; and whether there have been any changes in these patterns between 2003 and 2015. We provide national-level estimates of the influence of missing school on performance for all students, as well as for specific groups of students (broken out by gender, race/ethnicity and language status, poverty/income status, and disability status), to detect whether absenteeism is more problematic

for any of these groups. We also present evidence that higher levels of absenteeism are associated with lower levels of student performance. We focus on the characteristics and outcomes of students who missed three days of school or more in the previous month (the aggregate of those missing 3–4, 5–10, and more than 10 school days), which is our proxy for chronic absenteeism.⁴ We also discuss data associated with children who had perfect attendance the previous month and those who missed more than 10 days of school (our proxy for extreme chronic absenteeism).

Given that the majority of states (36 states and the District of Columbia) are using “chronic absenteeism” as a metric in their ESSA accountability plans, understanding the drivers and characteristics of absenteeism and, thus, the policy and practice implications, is more important than ever (Education Week 2017). Indeed, if absenteeism is to become a useful additional indicator of learning and help guide effective policy interventions, it is necessary to determine who experiences higher rates of absenteeism; why students miss school days; and how absenteeism affects student performance (after controlling for factors associated with absenteeism that also influence performance).

Major findings include:

One in five eighth-graders was chronically absent. Typically, in 2015, about one in five eighth-graders (19.2 percent) missed school three days or more in the month before the NAEP assessment and would be at risk of being chronically absent if that pattern were sustained over the school year.

- About 13 percent missed 3–4 days of school in 2015; about 5 percent missed 5–10 days of school (between a quarter and a half of the month); and a small minority, less than 2 percent, missed more than 10 days of school, or half or more of the school days that month.
- We find no significant differences in rates of absenteeism and chronic absenteeism by grade (similar shares of fourth-graders and eighth-graders were absent), and the patterns were relatively stable between 2003 and 2015.
- While, on average, there was no significant change in absenteeism levels between 2003 and 2015, there was a significant decrease over this period in the share of students missing more than 10 days of school.

Absenteeism varied substantially among the groups we analyzed. In our analysis, we look at absenteeism by gender, race/ethnicity and language status, FRPL (free or reduced-price lunch) eligibility (our proxy for poverty status),⁵ and IEP (individualized education program) status (our proxy for disability status).⁶ Some groups had much higher shares of students missing school than others.

- **Absenteeism by poverty and disability status.** Poor and somewhat poor students (those who qualified for free lunch or for reduced-price lunch) and students with disabilities (those who had individualized education programs, or IEPs) were much more likely than their more affluent or non-IEP peers to miss a lot of school.
 - Twenty-six percent of IEP students missed three school days or more, compared

with 18.3 percent of non-IEP students.

- Looking at poverty-status groups, 23.2 percent of students eligible for free lunch, and 17.9 percent of students eligible for reduced-price lunch, missed three school days or more, compared with 15.4 percent of students who were not FRPL-eligible (that is, eligible for neither free lunch nor reduced-price lunch).
- Among students missing more than 10 days of school, the share of free-lunch-eligible students was more than twice as large as the share of non-FRPL-eligible students (2.3 percent vs. 1.1 percent). Similarly, the share of IEP students in this category was more than double the share of non-IEP students (3.2 percent vs. 1.5 percent).
- **Absenteeism by race/ethnicity and language status.** Hispanic ELLs (English language learners) and Native American students were the most likely to miss three or more days of school (24.1 and 24.0 percent, respectively, missed more than three days of school), followed by black students (23.0 percent) and Hispanic non-ELL and white students (19.1 and 18.3 percent, respectively). Only 8.8 percent of Asian non-ELL students missed more than three days of school.
 - Perfect attendance rates were slightly higher among black and Hispanic non-ELL students than among white students, although all groups lagged substantially behind Asian students in this indicator.
 - Hispanic ELL students and Asian ELL students were the most likely to have missed more than 10 school days, at 3.9 percent and 3.2 percent, respectively. These shares are significantly higher than the overall average rate of 1.7 percent and than the shares for their non-ELL counterparts (Hispanic non-ELL students, 1.6 percent; Asian non-ELL students, 0.6 percent).

Absenteeism varied by state. Some states had much higher absenteeism rates than others. Patterns within states remained fairly consistent over time.

- In 2015, California and Massachusetts were the states with the highest full-attendance rates: 51.1 and 51.0 percent, respectively, of their students did not miss any school days; they are closely followed by Virginia (48.4 percent) and Illinois and Indiana (48.3 percent).
- At the other end of the spectrum, Utah and Wyoming had the largest shares of students missing more than 10 days of school in the month prior to the 2015 assessment (4.6 and 3.5 percent, respectively).
- Five states and Washington, D.C., stood out for their high shares of students missing three or more days of school in 2015: in Utah, nearly two-thirds of students (63.5 percent) missed three or more days; in Alaska, nearly half (49.6 percent) did; and in the District of Columbia, Wyoming, New Mexico, and Montana, nearly three in 10 students were in this absenteeism category.
- In most states, overall absenteeism rates changed little between 2003 and 2015.

Prior research linking chronic absenteeism with lowered academic performance is confirmed by our results. As expected, and as states have long understood, missing school is negatively associated with academic performance (after controlling for factors including race, poverty status, gender, IEP status, and ELL status). As students miss school more frequently, their performance worsens.

- **Overall performance gaps.** The gaps in math scores between students who did not miss any school and those who missed three or more days of school varied from 0.3 standard deviations (for students who missed 3–4 days of school the month prior to when the assessment was taken) to close to two-thirds of a standard deviation (for those who missed more than 10 days of school). The gap between students who did not miss any school and those who missed just 1–2 days of school was 0.10 standard deviations, a statistically significant but relatively small difference in practice.
- **Performance gaps by groups.**⁷ The relationship between absenteeism and performance poses problems for all students, but the degree to which absenteeism affects performance varies somewhat across student groups.
 - For Hispanic non-ELL students, missing more than 10 days of school harmed their performance on the math assessment more strongly than for the average (0.74 standard deviations vs. 0.64 on average).
 - For Asian non-ELL students, the penalty for missing school was smaller than the average (except for those missing 5–10 days).
 - Missing school hindered performance similarly across the three poverty-status groups (nonpoor, somewhat poor, and poor). However, given that there are substantial differences in the frequency with which children miss school by poverty status (that is, poor students are more likely to be chronically absent than nonpoor students), absenteeism may in fact further widen income-based achievement gaps.

What do we already know about why children miss school and which children miss school? What do we add to this evidence?

Poor health, parents' nonstandard work schedules, low socioeconomic status (SES), changes in adult household composition (e.g., adults moving into or out of the household), residential mobility, and extensive family responsibilities (e.g., children looking after siblings)—along with inadequate supports for students within the educational system (e.g., lack of adequate transportation, unsafe conditions, lack of medical services, harsh disciplinary measures, etc.)—are all associated with a greater likelihood of being absent, and particularly with being chronically absent (Ready 2010; U.S. Department of Education 2016).⁸ Low-income students and families disproportionately face these challenges, and

some of these challenges may be particularly acute in disadvantaged areas⁹; residence in a disadvantaged area may therefore amplify or reinforce the distinct negative effects of absenteeism on educational outcomes for low-income students.

A detailed 2016 report by the U.S. Department of Education showed that students with disabilities were more likely to be chronically absent than students without disabilities; Native American and Pacific Islander students were more likely to be chronically absent than students of other races and ethnicities; and non-ELL students were more likely to be chronically absent than ELL students.¹⁰ It also showed that students in high school were more likely to miss school than students in other grades, and that about 500 school districts reported that 30 percent or more of their students missed at least three weeks of school in 2013–2014 (U.S. Department of Education 2016).

Our analysis complements this evidence by adding several dimensions to the breakdown of who misses school—including absenteeism rates by poverty status and state—and by analyzing how missing school harms performance. We distinguish by the number of school days students report having missed in the month prior to the assessment (using five categories, from no days missed to more than 10 days missed over the month),¹¹ and we compare absenteeism rates across grades and across cohorts (between 2003 and 2015), as available in the NAEP data.¹²

How much school are children missing? Are they missing more days than the previous generation?

In 2015, almost one in five, or 19.2 percent of, eighth-grade students missed three or more days of school in the month before they participated in NAEP testing.¹³ About 13 percent missed 3–4 days, roughly 5 percent missed 5–10 days, and a small share—less than 2 percent—missed more than 10 days, or half or more of the instructional days that month (**Figure A**, bottom panel).¹⁴

On average, however, students in 2015 did not miss any more days than students in the earlier period; by some measures, they missed less school than children in 2003 (**Figure A**, top panel). While the share of students with occasional absences (1–2 days) increased moderately between 2003 and 2015, the share of students who missed more than three days of school declined by roughly 3 percentage points between 2003 and 2015. This reduction was distributed about evenly (in absolute terms) across the shares of students missing 3–4, 5–10, and more than 10 days of school. But in relative terms, the reduction was much more significant in the share of students missing more than 10 days of school (the share decreased by nearly one-third). We find no significant differences by grade (**Appendix Figure A**) or by subject. Thus, we have chosen to focus our analyses below on the sample of eighth-graders taking the math assessment only.

Which groups miss school most often? Which groups suffer the most from chronic absenteeism?

Absenteeism by race/ethnicity and language status

Hispanic ELLs and the group made up of Native Americans plus “all other races” (not white, black, Hispanic, or Asian) are the racial/ethnic and language status groups that missed school most frequently in 2015. Only 39.6 percent (Native American or other) and 41.2 percent (Hispanic ELL) did not miss any school in the month prior to the assessment (vs. 44.4 percent overall, 43.2 percent for white students, 43.5 percent for black students, and 44.1 percent for Hispanic non-ELL students; see **Figure B1**).¹⁵

Asian students (both non-ELL and ELL) are the least likely among all racial/ethnic student groups to be absent from school at all. Two-thirds of Asian non-ELL students and almost as many (61.6 percent of) Asian ELL students did not miss any school. Among Asian non-ELL students, only 8.8 percent missed three or more days of school: 6.1 percent missed 3–4 days (12.7 percent on average), 2.1 percent missed 5–10 days (relative to 4.8 percent for the overall average), and only 0.6 percent missed more than 10 days of school (relative to 1.7 percent for the overall average). Among Asian ELL students, the share who missed three or more days of school was 13.3 percent.

As seen in **Figure B2**, the differences in absenteeism rates between white students and Hispanic non-ELL students were relatively small, when looking at the shares of students missing three or more days of school (18.3 percent and 19.1 percent, respectively). The gaps are somewhat larger for black, Native American, and Hispanic ELL students relative to white students (with shares missing three or more days at 23.0, 24.0, and 24.1 percent, respectively, relative to 18.3 percent for white students).

Among students who missed a lot of school (more than 10 days), there were some more substantial differences by race and language status. About 3.9 percent of Hispanic ELL students and 3.2 percent of Asian ELL students missed more than 10 days of school, compared with 2.2 percent for Native American and other races, 2.0 percent for black students, 1.4 percent for white students, and only 0.6 percent for Asian non-ELL students (all relative to the overall average of 1.7 percent) (see **Figure B3**).

Absenteeism by income status

The attendance gaps are even larger by income status than they are by race/ethnicity and language status (Figures B1–B3). Poor (free-lunch-eligible) students were 5.9 percentage

points more likely to miss some school than nonpoor (non-FRPL-eligible) students, and they were 7.8 percentage points more likely to miss school three or more days (23.2 vs. 15.4 percent).¹⁶ Among somewhat poor (reduced-price-lunch-eligible) students, 17.9 percent missed three or more days of school. The lowest-income (free-lunch-eligible) students were 4.1 percentage points more likely to miss school 3–4 days than non-FRPL-eligible students, and more than 2.4 percentage points more likely to miss school 5–10 days (**Appendix Figure B**). Finally, and most striking, free-lunch-eligible students—the most economically disadvantaged students—were more than twice as likely to be absent from school for more than 10 days as nonpoor students. In other words, they were much more likely to experience extreme chronic absenteeism. Figures B1–B3 show that the social-class gradient for the prevalence of absenteeism, proxied by eligibility for free or reduced-price lunch, is noticeable in all absenteeism categories, and especially when it comes to those students who missed the most school.

Absenteeism by disability status

Students with IEPs were by far the most likely to miss school relative to all other groups.¹⁷ The share of IEP students missing school exceeded the share of non-IEP students missing school by 7.7 percentage points (Figure B1). More than one in four IEP students had missed school three days or more in the previous month (Figure B2). About 15.5 percent of students with IEPs missed school 3–4 days (vs. 12.4 percent among non-IEP students); 7.3 percent missed 5–10 days; and 3.2 percent missed more than 10 days of school in the month before being tested (Appendix Figure B; Figure B3).

Absenteeism by gender

The differences by gender are slightly surprising (Figures B1–B3). Boys showed a higher full-attendance rate than girls (46.6 vs. 42.1 percent did not miss any school), and boys were no more likely than girls to display extreme chronic absenteeism (1.7 percent of boys and 1.6 percent of girls missed more than 10 days of school). Boys (18.2 percent) were also slightly less likely than girls (20.2 percent) to be chronically absent (to miss three or more days of school, as per our definition).

Has there been any change over time in which groups of children are most often absent from school?

For students in several groups, absenteeism fell between 2003 and 2015 (**Figure C1**), in keeping with the overall decline noted above. Hispanic students (both ELL and non-ELL), Asian non-ELL students, Native American and other race students, free-lunch-eligible (poor) students, reduced-priced-lunch-eligible (somewhat poor) students, non-FRPL-eligible (nonpoor) students, and IEP students were all less likely to miss school in 2015

than they were over a decade earlier. For non-IEP and white students, however, the share of students who did not miss any school days in the month prior to NAEP testing remained essentially unchanged, while it increased slightly for black students and Asian ELL students (by about 2 percentage points each).

As seen in **Figure C2**, we also note across-the-board reductions in the shares of students who missed three or more days of school (with the exception of the share of Asian ELL students, which increased by 1.7 percentage points over the time studied). The largest reductions occurred for students with disabilities (IEP students), Hispanic non-ELL students, Native American students or students of other races, free-lunch-eligible students, and non-FRPL-eligible students (each of these groups experienced a reduction of at least 4.4 percentage points).¹⁸ For all groups except Asian ELL students, the share of students missing more than 10 days of school (**Figure C3**) also decreased (for Asian ELL students, it increased by 1.3 percentage points).

In order to get a full understanding of these comparisons, we need to look at both the absolute and relative differences. Overall, the data presented show modest absolute differences in the shares of students who are absent (at any level) in various groups when compared with the averages for all students (Figures B1–B3 and Appendix Figure B). The differences (both absolute and relative) among student groups missing a small amount of school (1–2 days) are minimal for most groups. However, while the differences among groups are very small in absolute terms for students missing a lot of school (more than 10 days), some of the differences are very large in relative terms. (And, taking into account the censoring problem mentioned earlier, they could potentially be even larger.)

The fact that the absolute differences are small is in marked contrast to differences seen in many other education indicators of outcomes and inputs, which tend to be much larger by race and income divisions (Carnoy and García 2017; García and Weiss 2017). Nevertheless, both the absolute and relative differences we find are revealing and important, and they add to the set of opportunity gaps that harm students' performance.

Is absenteeism particularly high in certain states?

In 2015, California and Massachusetts had the highest full-attendance rates among the states (51.1 and 51.0 percent of students, respectively, did not miss any school days), closely followed by Virginia (48.4 percent) and Illinois and Indiana (48.3 percent), while Alaska, the District of Columbia, Montana, New Mexico, and Utah had the lowest rates of perfect attendance (fewer than one in three students had perfect attendance). The latter group of states also had the highest rates of chronic or extreme chronic absenteeism: Utah had by far the largest share of students missing school three or more days (63.5 percent), followed by Alaska (49.6 percent), and Wyoming, New Mexico, Montana, and the District of Columbia (the latter four ranging from 27.5 to 29.8 percent). Utah also had the largest share of students missing school more than 10 days (4.6 percent), followed by Wyoming, Montana, and the District of Columbia (3.5, 3.3, and 3.2 percent, respectively).

(See the **Interactive Map** for data for all states.)

Over the 2003–2015 period, 22 states saw their share of students with perfect attendance grow. The number drops to 15 if we count only states in which the share of students not missing any school increased by more than 1 percentage point. In almost every state (44 states), the share of students who missed more than 10 school days decreased, and in 41 states, the share of students who missed three or more days of school also dropped, though it increased in the other 10.¹⁹ Louisiana, Massachusetts, Nevada, Indiana, New Hampshire, and California were the states in which these shares decreased the most, by more than 6 percentage points, while Utah, Alaska, and North Dakota were the states where this indicator (three or more days missed) showed the worst trajectory over time (that is, the largest increases in chronic absenteeism).

Is absenteeism a problem for student performance?

Previous research has focused mainly on two groups of students when estimating how much absenteeism influences performance: students who are chronically absent and all other students. This prior research has concluded that students who are chronically absent are at serious risk of falling behind in school, having lower grades and test scores, having behavioral issues, and, ultimately, dropping out (U.S. Department of Education 2016; see summary in Gottfried and Ehrlich 2018). Our analysis allows for a closer examination of the relationship between absenteeism and performance, as we look at the impact of absenteeism on student performance at five levels of absenteeism. This design allows us to test not only whether different levels of absenteeism have different impacts on performance (as measured by NAEP test scores), but also to identify the point at which the impact of absenteeism on performance becomes a concern. Specifically, we look at the relationship between student absenteeism and mathematics performance among eighth-graders at various numbers of school days missed.²⁰

The results shown in **Figure D** and **Appendix Table 1** are obtained from regressions that assess the influence of absenteeism and other individual- and school-level determinants of performance. The latter include students' race/ethnicity, gender, poverty status, ELL status, and IEP status, as well as the racial/ethnic composition of the school they attend and the share of students in their school who are eligible for FRPL (a proxy for the SES composition of the school). Our results thus identify the distinct association between absenteeism and performance, net of other factors that are known to influence performance.²¹

In general, the more frequently children missed school, the worse their performance. Relative to students who didn't miss any school, those who missed some school (1–2 school days) accrued, on average, an educationally small, though statistically significant, disadvantage of about 0.10 standard deviations (SD) in math scores (Figure D and Appendix Table 1, first row). Students who missed more school experienced much larger declines in performance. Those who missed 3–4 days or 5–10 days scored, respectively,

0.29 and 0.39 standard deviations below students who missed no school. As expected, the harm to performance was much greater for students who were absent half or more of the month. Students who missed more than 10 days of school scored nearly two-thirds (0.64) of a standard deviation below students who did not miss any school. All of the gaps are statistically significant, and together they identify a structural source of academic disadvantage.

The results show that missing school has a negative effect on performance regardless of how many days are missed, with a moderate dent in performance for those missing 1–2 days and a troubling decline in performance for students who missed three or more days that becomes steeper as the number of missed days rises to 10 and beyond. The point at which the impact of absenteeism on performance becomes a concern, therefore, is when students miss *any* amount of school (vs. having perfect attendance); the level of concern grows as the number of missed days increases.

Gaps in performance associated with absenteeism are similar across all races/ethnicities, between boys and girls, between FRPL-eligible and noneligible students, and between students with and without IEPs. For example, relative to nonpoor (non-FRPL-eligible) students who did not miss any school, nonpoor children who missed school accrued a disadvantage of -0.09 SD (1–2 school days missed), -0.27 SD (3–4 school days missed), -0.36 SD (5–10 school days missed), and -0.63 SD (more than 10 days missed). For students eligible for reduced-price lunch (somewhat poor students) who missed school, compared with students eligible for reduced-price lunch who did not miss any school, the gaps are -0.16 SD (1–2 school days missed), -0.33 SD (3–4 school days missed), -0.45 SD (5–10 school days missed), and -0.76 SD (more than 10 days missed). For free-lunch-eligible (poor) students who missed school, relative to poor students who do not miss any school, the gaps are -0.11 SD (1–2 school days missed), -0.29 SD (3–4 school days missed), -0.39 SD (5–10 school days missed), and -0.63 SD (more than 10 days missed). By IEP status, relative to non-IEP students who did not miss any school, non-IEP students who missed school accrued a disadvantage of -0.11 SD (1–2 school days missed), -0.30 SD (3–4 school days missed), -0.40 SD (5–10 school days missed), and -0.66 SD (more than 10 days missed). And relative to IEP students who did not miss any school, IEP students who missed school accrued a disadvantage of -0.05 SD (1–2 school days missed), -0.21 SD (3–4 school days missed), -0.31 SD (5–10 school days missed), and -0.52 SD (more than 10 days missed). (For gaps by gender and by race/ethnicity, see Appendix Table 1).

Importantly, though the gradients of the influence of absenteeism on performance by race, poverty status, gender, and IEP status (Appendix Table 1) are generally similar to the gradients in the overall relationship between absenteeism and performance for all students, this does not mean that all groups of students are similarly disadvantaged when it comes to the full influence of absenteeism on performance. The overall performance disadvantage faced by any given group is influenced by multiple factors, including the size of the group's gaps at each level of absenteeism (Appendix Table 1), the group's rates of absenteeism (Figure B), and the relative performance of the group with respect to the other groups (Carnoy and García 2017). The total gap that results from adding these factors can thus become substantial.

To illustrate this, we look at Hispanic ELL, Asian non-ELL, Asian ELL, and FRPL-eligible students. The additional penalty associated with higher levels of absenteeism is smaller than average for Hispanic ELL students experiencing extreme chronic absenteeism; however, their performance is the lowest among all groups (Carnoy and García 2017) and they have among the highest absenteeism rates.

The absenteeism penalty is also smaller than average for Asian non-ELL students (except at 5-10 days); however, in contrast with the previous example, their performance is the highest among all groups (Carnoy and García 2017) and their absenteeism rate is the lowest.

The absenteeism penalty for Asian ELL students is larger than average, and the gradient is steeper.²² Asian ELL students also have lower performance than most other groups (Carnoy and García 2017).

Finally, although there is essentially no difference in the absenteeism–performance relationship by FRPL eligibility, the higher rates of absenteeism (at every level) for students eligible for free or reduced-price lunch, relative to nonpoor (FRPL-ineligible) students, put low-income students at a greater risk of diminished performance due to absenteeism than their higher-income peers, widening the performance gap between these two groups.

Conclusions

Student absenteeism is a puzzle composed of multiple pieces that has a significant influence on education outcomes, including graduation and the probability of dropping out. The factors that contribute to it are complex and multifaceted, and likely vary from one school setting, district, and state to another. This analysis aims to shed additional light on some key features of absenteeism, including which students tend to miss school, how those profiles have changed over time, and how much missing school matters for performance.

Our results indicate that absenteeism rates were high and persistent over the period examined (2003–2015), although they did decrease modestly for most groups and in most states. Unlike findings for other factors that drive achievement gaps—from preschool attendance to economic and racial school segregation to unequal funding (Carnoy and García 2017; García 2015; García and Weiss 2017)—our findings here seem to show some positive news for black and Hispanic students: these students had slightly higher perfect attendance rates than their white peers; in addition, their perfect attendance rates have increased over time at least as much as rates for white students. But with respect to the absenteeism rates that matter the most (three or more days of school missed, and more than 10 days of school missed), black and Hispanic students still did worse (just as is the case with other opportunity gaps faced by these students). Particularly worrisome is the high share of Hispanic ELL students who missed more than 10 school days—nearly 4 percent. Combined with the share of Hispanic ELL students who missed 5–10 school days (nearly 6 percent), this suggests that one in 10 children in this group would miss school for at least a quarter of the instructional time.

The advantages that Asian students enjoy relative to white students and other racial/ethnic groups in academic settings is also confirmed here (especially among Asian non-ELL students): the Asian students in the sample missed the least school. And there is a substantial difference in rates of absenteeism by poverty (FRPL) and disability (IEP) status, with the difference growing as the number of school days missed increases. Students who were eligible for free lunch were twice as likely as nonpoor (FRPL-ineligible) students to be absent more than 10 days, and students with IEPs were more likely than any other group to be absent (one or more days, that is, to not have perfect attendance).

Missing school has a distinct negative influence on performance, even after the potential mediating influence of other factors is taken into account, and this is true at all rates of absenteeism. The bottom line is that the more days of school a student misses, the poorer his or her performance will be, irrespective of gender, race, ethnicity, disability, or poverty status.

These findings help establish the basis for an expanded analysis of absenteeism along two main, and related, lines of inquiry. One, given the marked and persistent patterns of school absenteeism, it is important to continue to explore and document why children miss school—to identify the full set of factors inside and outside of schools that influence absenteeism. Knowing whether (or to what degree) those absences are attributable to family circumstances, health, school-related factors, weather, or other factors, is critical to effectively designing and implementing policies and practices to reduce absenteeism, especially among students who chronically miss school. The second line of research could look at variations in the prevalence and influence of absenteeism among the states, and any changes over time in absenteeism rates within each state, to assess whether state differences in policy are reducing absenteeism and mitigating its negative impacts. For example, in recent years, Connecticut has made reducing absenteeism, especially chronic absenteeism, a top education policy priority, and has developed a set of strategies and resources that could be relevant to other states as well, especially as they begin to assess and respond to absenteeism as part of their ESSA plans.²³

The analyses in this report confirm the importance of looking closely into “other” education data, above and beyond performance (test scores) and individual and school demographic characteristics. The move in education policy toward widening accountability indicators to indicators of school quality, such as absenteeism, is important and useful, and could be expanded to include other similar data. Indicators of bullying, school safety, student tardiness, truancy, level of parental involvement, and other factors that are relevant to school climate, well-being, and student performance would also merit attention.

Acknowledgements

The authors gratefully acknowledge John Schmitt and Richard Rothstein for their insightful comments and advice on earlier drafts of the paper. We are also grateful to Krista Faries for editing this report, to Lora Engdahl for her help structuring it, and to Julia Wolfe for her work preparing the tables and figures included in the appendix. Finally, we appreciate the assistance of communications staff at the Economic Policy Institute who helped to disseminate the study, especially Dan Crawford and Kayla Blado.

About the authors

Emma García is an education economist at the Economic Policy Institute, where she specializes in the economics of education and education policy. Her areas of research include analysis of the production of education, returns to education, program evaluation, international comparative education, human development, and cost-effectiveness and cost-benefit analysis in education. Prior to joining EPI, García was a researcher at the Center for Benefit-Cost Studies of Education, the National Center for the Study of Privatization in Education, and the Community College Research Center at Teachers College, Columbia University, and did consulting work for the National Institute for Early Education Research, MDRC, and the Inter-American Development Bank. García has a Ph.D. in economics and education from Teachers College, Columbia University.

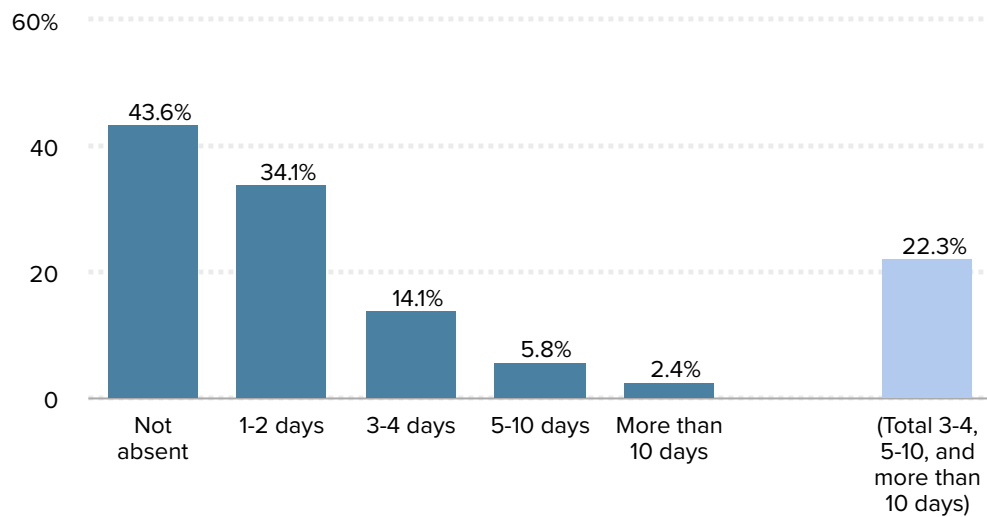
Elaine Weiss served as the national coordinator for the Broader, Bolder Approach to Education (BBA) from 2011 to 2017, in which capacity she worked with four co-chairs, a high-level task force, and multiple coalition partners to promote a comprehensive, evidence-based set of policies to allow all children to thrive. She is currently working on a book drawing on her BBA case studies, co-authored with Paul Reville, to be published by the Harvard Education Press. Weiss came to BBA from the Pew Charitable Trusts, where she served as project manager for Pew's Partnership for America's Economic Success campaign. Weiss was previously a member of the Centers for Disease Control and Prevention's task force on child abuse and served as volunteer counsel for clients at the Washington Legal Clinic for the Homeless. She holds a Ph.D. in public policy from the George Washington University and a J.D. from Harvard Law School.

Figure A

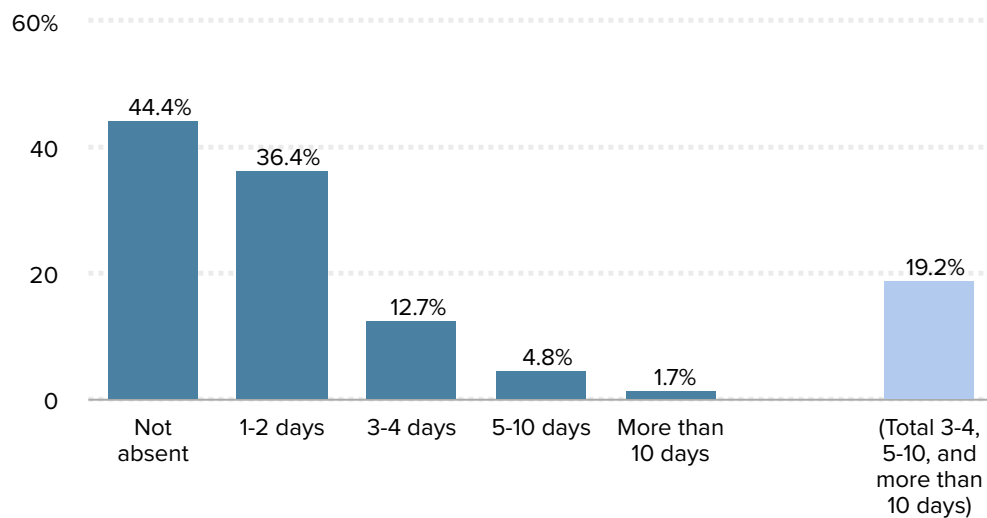
How much school are children missing?

Share of eighth-grade students by attendance/absenteeism category, in the eighth-grade mathematics NAEP sample, 2003 and 2015

2003



2015



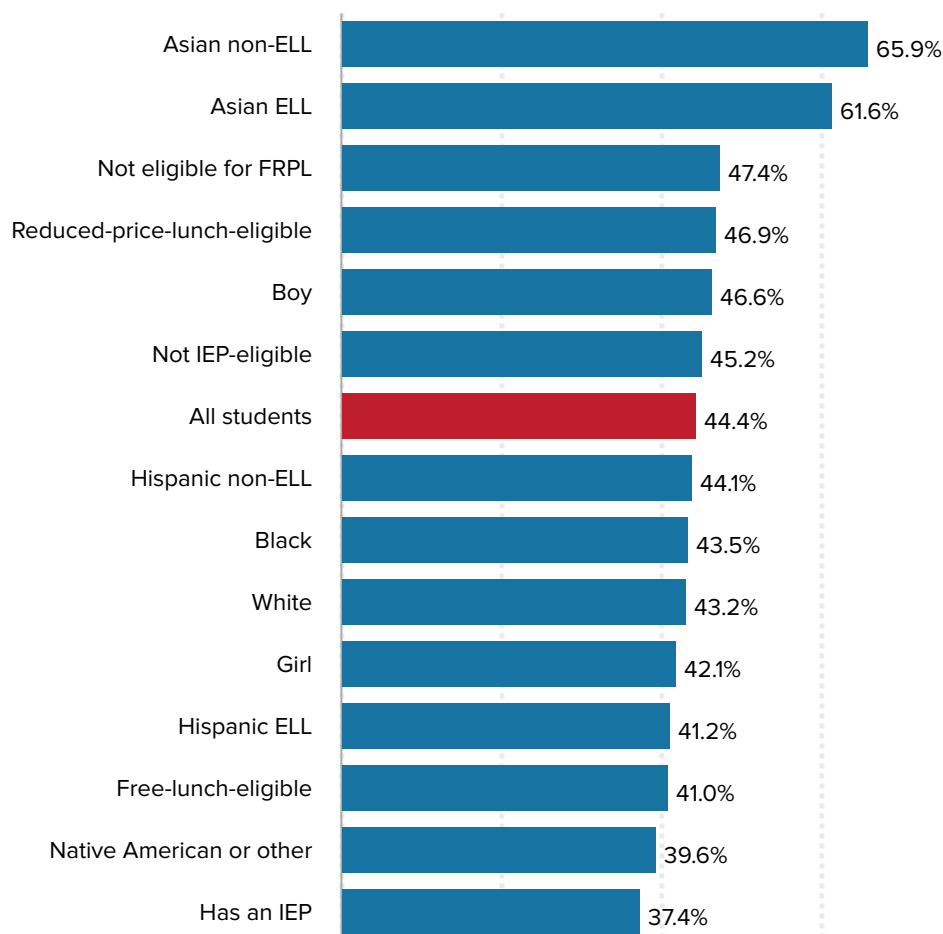
Source: EPI analysis of National Assessment of Educational Progress microdata, 2003 and 2015

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Figure B1

Which groups of students had the highest shares missing no school?

Share of eighth-graders with perfect attendance in the month prior to the 2015 NAEP mathematics assessment, by group



Notes: Students are grouped by gender, race/ethnicity and ELL status, FRPL eligibility, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines).

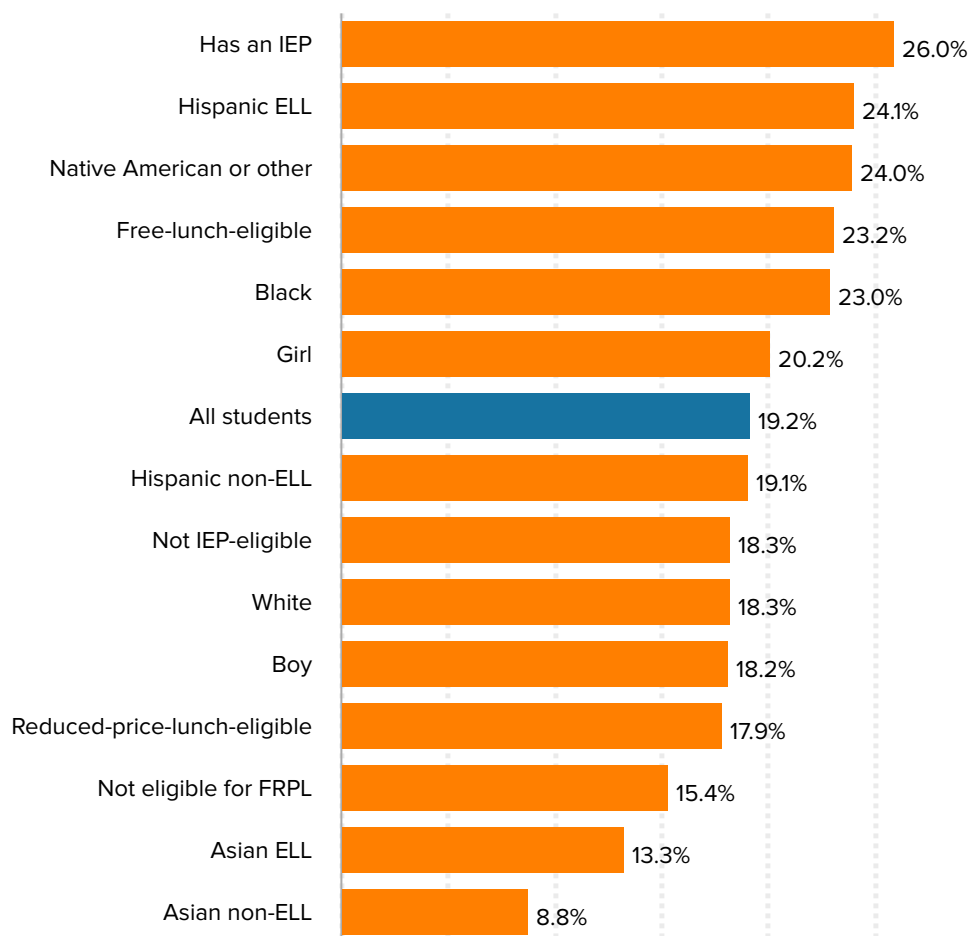
Source: EPI analysis of National Assessment of Educational Progress microdata, 2015

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Figure B2

Which groups of students had the highest shares missing three or more days?

Share of eighth-graders missing three or more days of school in the month prior to the 2015 NAEP mathematics assessment, by group



Notes: This chart represents the aggregate of data for students who missed 3–4 days, 5–10 days, and more than 10 days of school. Students are grouped by gender, race/ethnicity and ELL status, FRPL eligibility, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines).

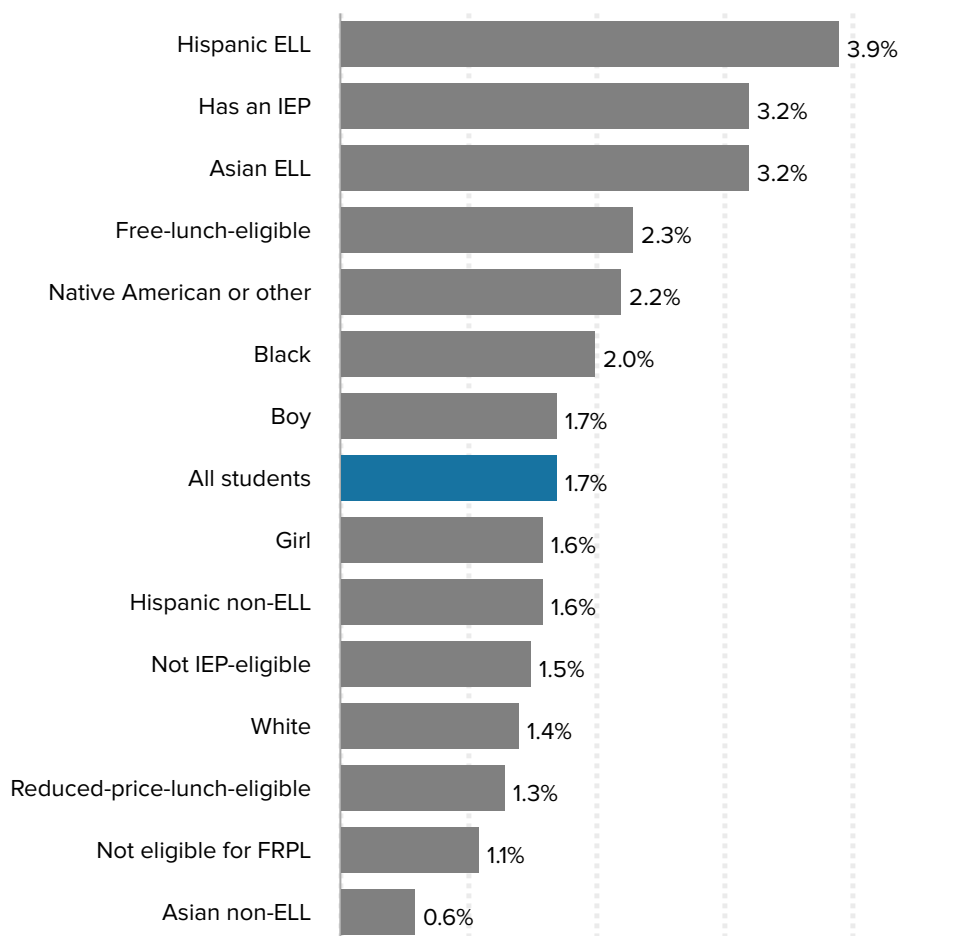
Source: EPI analysis of National Assessment of Educational Progress microdata, 2015

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Figure B3

Which groups of students had the highest shares missing more than 10 days?

Share of eighth-graders missing more than 10 days of school in the month prior to the 2015 NAEP mathematics assessment, by group



Notes: Students are grouped by gender, race/ethnicity and ELL status, FRPL status, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines).

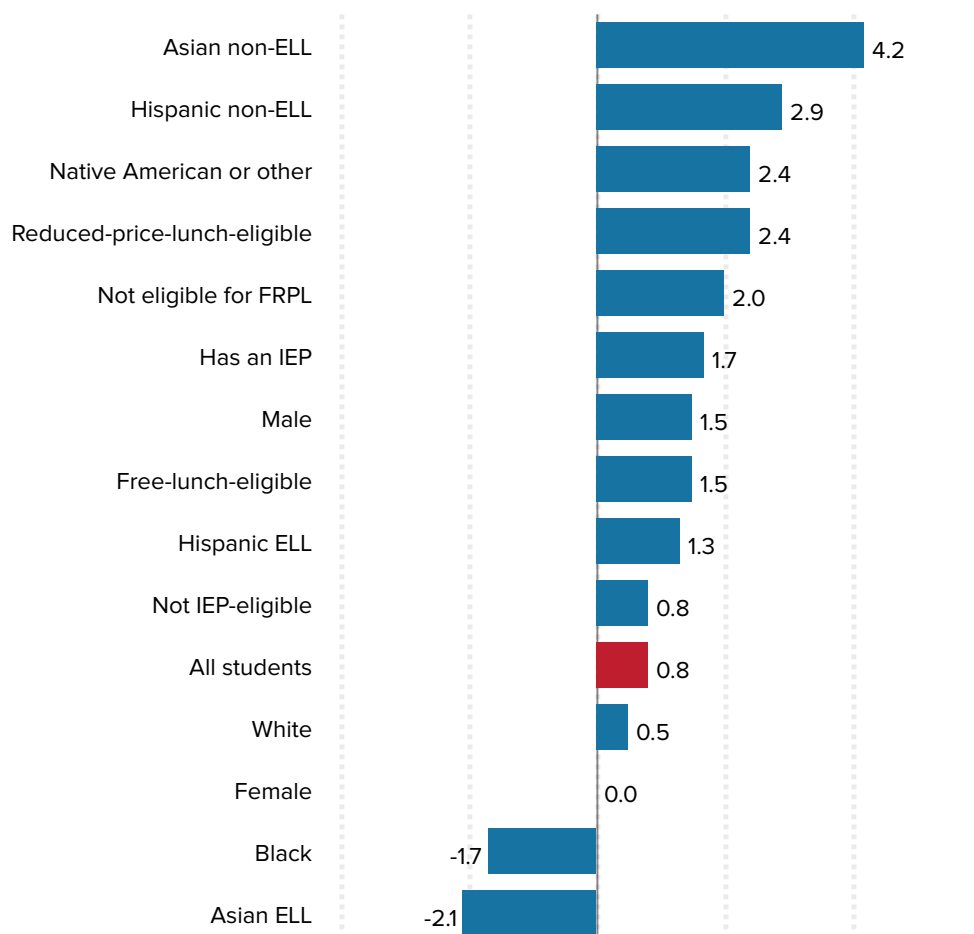
Source: EPI analysis of National Assessment of Educational Progress microdata, 2015

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Figure C1

How much have perfect attendance rates changed since 2003?

Percentage-point change in the share of eighth-graders who had perfect attendance in the month prior to the NAEP mathematics assessment, between 2003 and 2015, by group



Notes: Students are grouped by gender, race/ethnicity and ELL status, FRPL status, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines).

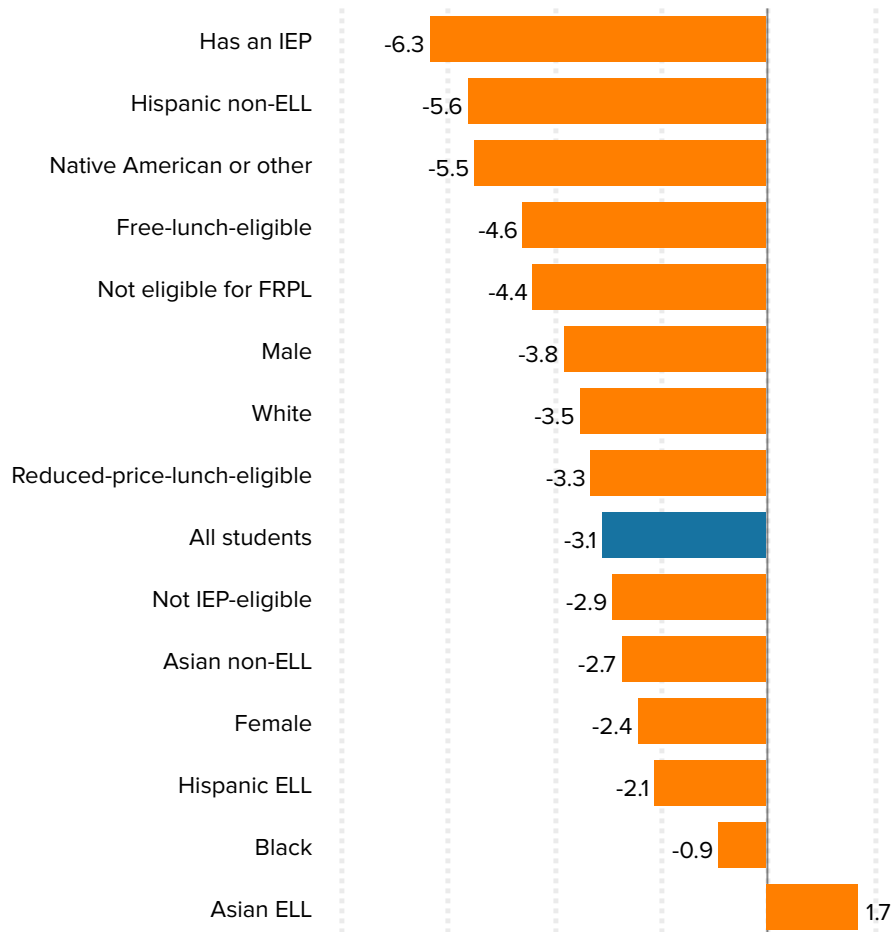
Source: EPI analysis of National Assessment of Educational Progress microdata, 2003 and 2015

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Figure C2

How much have rates of students missing three or more days changed since 2003?

Percentage-point change in the share of eighth-graders who were absent from school three or more days in the month prior to the NAEP mathematics assessment, between 2003 and 2015, by group



Notes: This chart represents the aggregate of data for students who missed 3–4 days, 5–10 days, and more than 10 days of school. Students are grouped by gender, race/ethnicity and ELL status, FRPL status, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines).

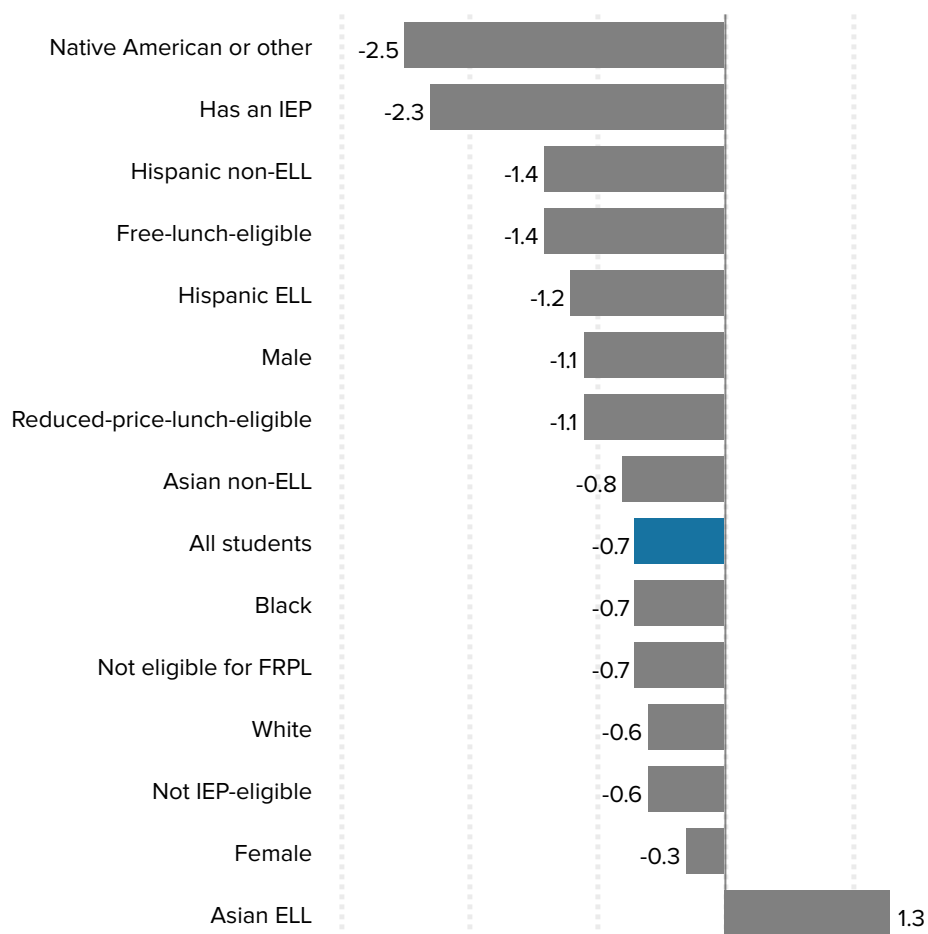
Source: EPI analysis of National Assessment of Educational Progress microdata, 2003 and 2015

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Figure C3

How much have rates of students missing more than 10 days changed since 2003?

Percentage-point change in the share of eighth-graders who were absent from school more than 10 days in the month prior to the NAEP mathematics assessment, between 2003 and 2015, by group



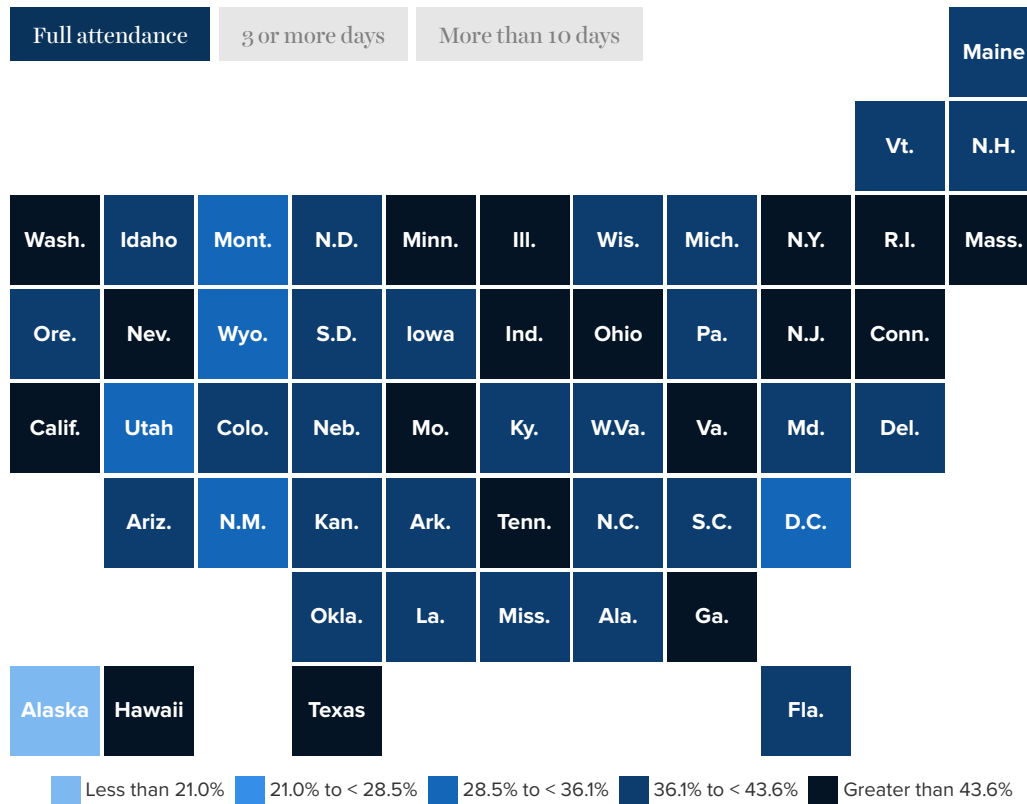
Notes: Students are grouped by gender, race/ethnicity and ELL status, FRPL status, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines).

Source: EPI analysis of National Assessment of Educational Progress microdata, 2003 and 2015

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Interactive
Map

Share of students absent from school, by state and by number of days missed, 2015



Notes: Based on the number of days eighth-graders in each state reported having missed in the month prior to the NAEP mathematics assessment. "Three or more days" represents the aggregate of data for students who missed 3–4 days, 5–10 days, and more than 10 days of school.

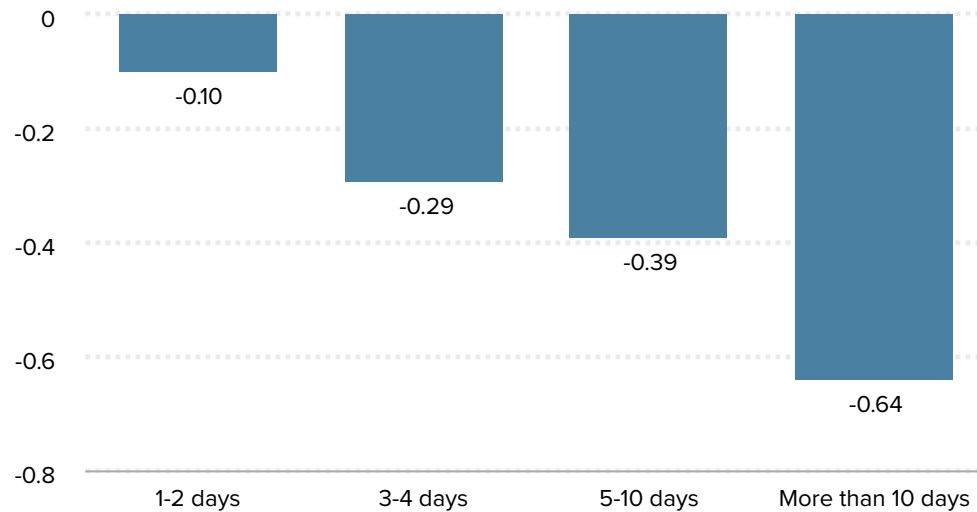
Source: EPI analysis of National Assessment of Educational Progress microdata, 2015

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Figure D

The more frequently students miss school, the worse their performance

Performance disadvantage experienced by eighth-graders on the 2015 NAEP mathematics assessment, by number of school days missed in the month prior to the assessment, relative to students with perfect attendance in the prior month (standard deviations)



Notes: Estimates are obtained after controlling for race/ethnicity, poverty status, gender, IEP status, and ELL status; for the racial/ethnic composition of the student's school; and for the share of students in the school who are eligible for FRPL (a proxy for school socioeconomic composition). All estimates are statistically significant at $p < 0.01$.

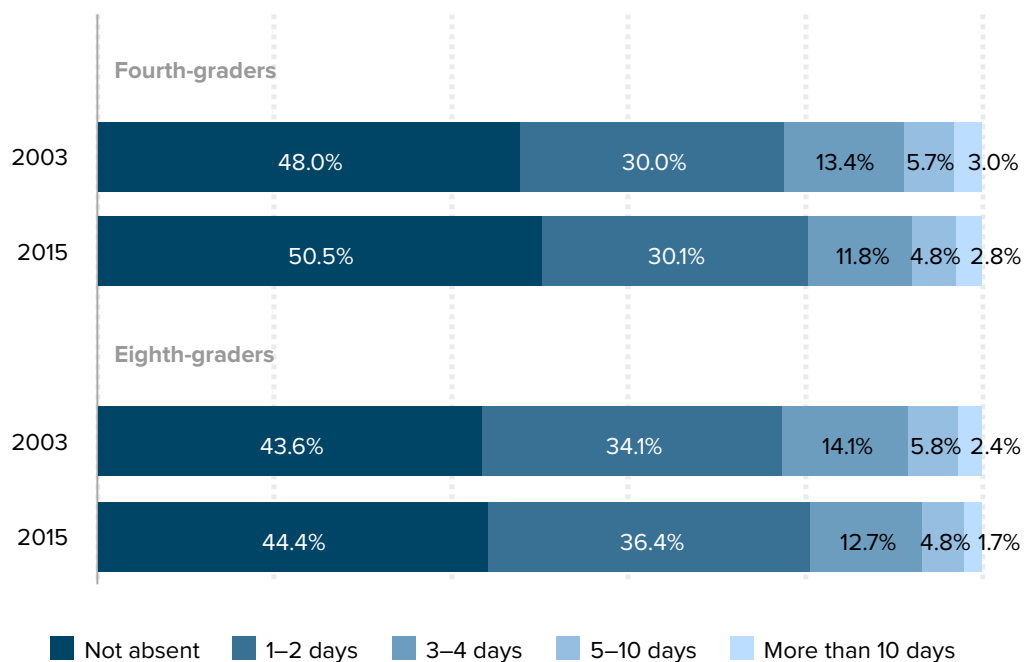
Source: EPI analysis of National Assessment of Educational Progress microdata, 2015

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Appendix
Figure A

Are there significant differences in student absenteeism rates across grades and over time?

Shares of fourth-graders and eighth-graders who missed school no days, 1–2 days, 3–4 days, 5–10 days, and more than 10 days in the month before the NAEP mathematics assessment, 2003 and 2015

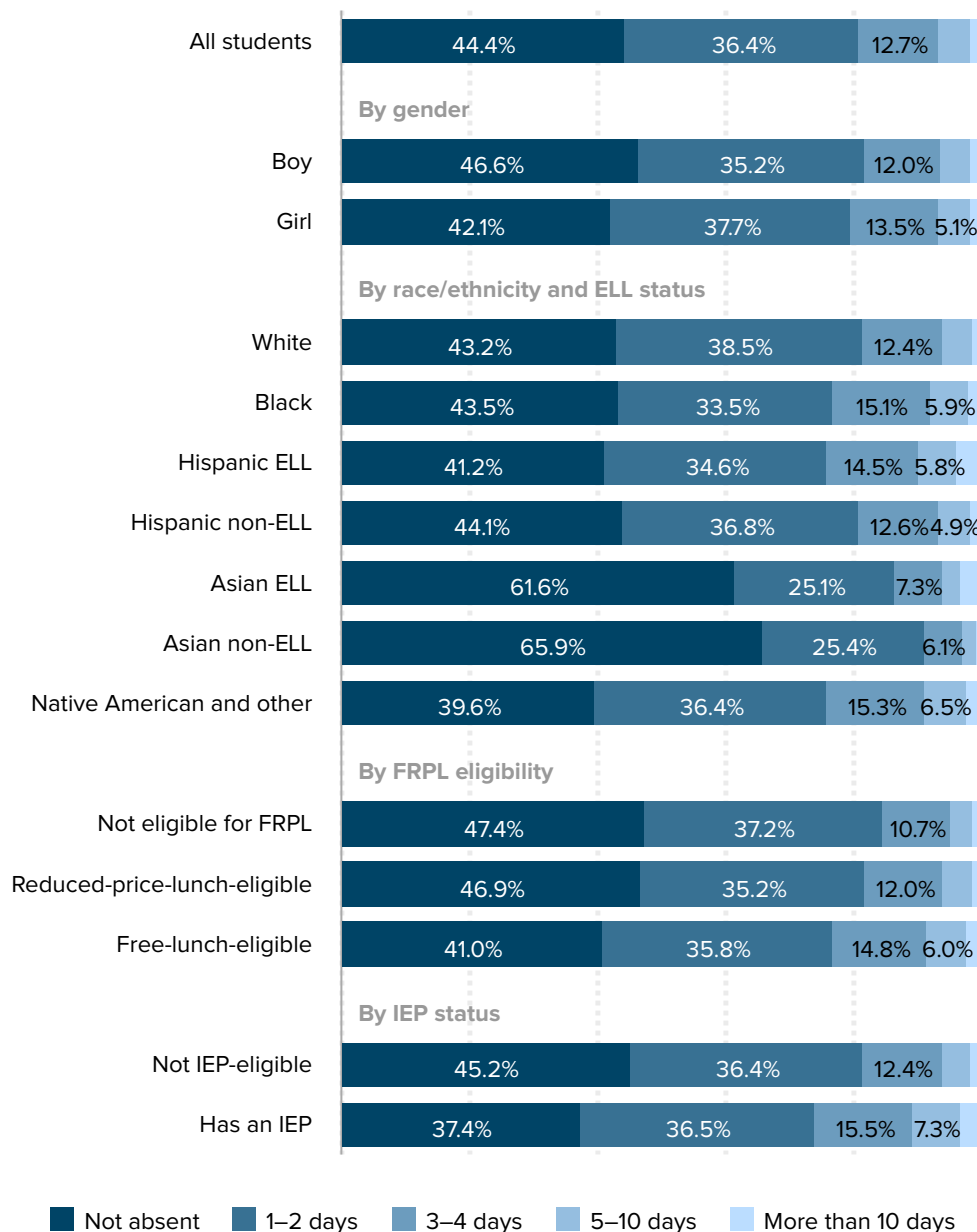


Source: EPI analysis of National Assessment of Educational Progress microdata, 2003 and 2015

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Appendix
Figure B**Detailed absenteeism rates by group**

Shares of eighth-graders in each group who missed school no days, 1–2 days, 3–4 days, 5–10 days, and more than 10 days in the month before the NAEP mathematics assessment, 2015



Notes: Students are grouped by gender, race/ethnicity and ELL status, FRPL eligibility, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines).

Source: EPI analysis of National Assessment of Educational Progress microdata, 2015

Appendix | **Economic Policy Institute**
Figure B
(cont.)

Appendix
Table 1

The influence of absenteeism on eighth-graders' math achievement

Performance disadvantage experienced by eighth-graders on the 2015 NAEP mathematics assessment, by group and by number of days missed in the month prior to the assessment, relative to students in the same group with perfect attendance in the prior month (standard deviations)

		1–2 days	3–4 days	5–10 days	More than 10 days
All students	All students	-0.10***	-0.29***	-0.39***	-0.64***
		(0.01)	(0.01)	(0.02)	(0.04)
By gender	Girl	-0.12***	-0.30***	-0.38***	-0.65***
		(0.01)	(0.02)	(0.03)	(0.06)
	Boy	-0.09***	-0.27***	-0.39***	-0.62***
		(0.01)	(0.02)	(0.03)	(0.05)
By race/ ethnicity	White	-0.09***	-0.27***	-0.36***	-0.61***
		(0.01)	(0.02)	(0.03)	(0.06)
	Black	-0.11***	-0.30***	-0.36***	-0.63***
		(0.02)	(0.03)	(0.04)	(0.07)
	Hispanic ELL	-0.13**	-0.33***	-0.43***	-0.55***
		(0.05)	(0.07)	(0.10)	(0.15)
	Hispanic non-ELL	-0.11***	-0.32***	-0.41***	-0.74***
		(0.02)	(0.03)	(0.05)	(0.07)
	Asian ELL	-0.31**	-0.51**	-0.58	-1.68***
		(0.13)	(0.22)	(0.43)	(0.57)
	Asian non-ELL	-0.06	-0.13	-0.51***	-0.50***
		(0.05)	(0.10)	(0.16)	(0.15)
By FRPL eligibility	Other	-0.13***	-0.21***	-0.38***	-0.58***
		(0.04)	(0.05)	(0.08)	(0.13)
	Not eligible for FRPL	-0.09***	-0.27***	-0.36***	-0.63***
		(0.01)	(0.02)	(0.03)	(0.07)
	Reduced-price-lunch-eligible	-0.16***	-0.33***	-0.45***	-0.76***
		(0.04)	(0.06)	(0.09)	(0.12)
	Free-lunch-eligible	-0.11***	-0.29***	-0.39***	-0.63***
		(0.01)	(0.02)	(0.03)	(0.05)

Appendix
Table 1
(cont.)

		1–2 days	3–4 days	5–10 days	More than 10 days
By IEP status	Not IEP-eligible	-0.11***	-0.30***	-0.40***	-0.66***
		(0.01)	(0.01)	(0.02)	(0.04)
	Has an IEP	-0.05*	-0.21***	-0.31***	-0.52***
		(0.03)	(0.04)	(0.06)	(0.08)

*** p < 0.01; ** p < 0.05; * p < 0.1

Notes: Students are grouped by gender, race/ethnicity and ELL status, FRPL eligibility, and IEP status. ELL stands for English language learner; IEP stands for individualized education program (learning plan designed for each student who is identified as having a disability); and FRPL stands for free or reduced-price lunch (federally funded meal programs for students of families meeting certain income guidelines). Estimates for the “All students” sample are obtained after controlling for race/ethnicity, poverty status, gender, IEP status, and ELL status; for the racial/ethnic composition of the student’s school; and for the share of students in the school who are eligible for FRPL (a proxy for school socioeconomic composition). For each group, controls that are not used to identify the group are included (for example, for black students, estimates control for poverty status, gender, IEP status, and ELL status; for the racial/ethnic composition of the student’s school; and for the share of students in the school who are eligible for FRPL; etc.)

Source: EPI analysis of National Assessment of Educational Progress microdata, 2015

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Endnotes

1. See García 2014 and García and Weiss 2016.
2. See ESSA 2015. According to ESSA, this nontraditional indicator should measure “school quality or student success.” (The other indicators at elementary/middle school include measures of academic achievement, e.g., performance or proficiency in reading/language arts and math; academic progress, or student growth; and progress in achieving English language proficiency.)
3. Thirty-six states and the District of Columbia have included student absenteeism as an accountability metric in their states’ ESSA plans. This metric meets all the requirements (as outlined in ESSA) to be considered a measure of school quality or student success (valid, reliable, calculated the same for all schools and school districts across the state, can be disaggregated by student subpopulation, is a proven indicator of school quality, and is a proven indicator of student success; see Education Week 2017). See FutureEd 2017 for differences among the states’ ESSA plans. See the web page “[ESSA Consolidated State Plans](#)” (on the Department of Education website) for the most up-to-date information on the status and content of the state plans.
4. There is no precise official definition that identifies how many missed days constitutes chronic absenteeism on a monthly basis. Definitions of chronic absenteeism are typically based on the number of days missed over an entire school year, and even these definitions vary. For the Department of Education, chronically absent students are those who “miss at least 15 days of school in a year” (U.S. Department of Education 2016). Elsewhere, chronic absenteeism is frequently defined as missing 10 percent or more of the total number of days the student is enrolled in school, or a month or more of school, in the previous year (Ehrlich et al. 2013; Balfanz and Byrnes 2012). Given that the school year can range in length from 180 to 220 days, and given that there are about 20–22 instructional days in a month of school, these latter two definitions imply that a student is chronically absent if he or she misses between 18 and 22 days per year (depending on the length of the school year) or more, or between 2.0 and about 2.5 days (or more) per month on average (assuming a nine-month school year). In our analysis, we define students as being chronically absent if they have missed three or more days of school in the last month (the aggregate of students missing “3–4,” “5–10,” or “more than 10 days”), and as experiencing extreme chronic absenteeism if they have missed “more than 10 days” of school in the last month. These categories are not directly comparable to categories used in studies of absenteeism on a per-year basis or that use alternative definitions or thresholds. We purposely analyze data for each of these “days absent” groups separately to identify their distinct characteristics and the influence of those differences on performance. (Appendix Figure B and Appendix Table 1 provide separate results for each of the absenteeism categories.)
5. In our analysis, we define “poor” students as those who are eligible for free lunch; we define “somewhat poor” students as those who are eligible for reduced-price lunch; and we define “nonpoor” students as those who are not eligible for free or reduced-price lunch. We use “poverty status,” “income status,” “socioeconomic status” (“SES”), and “social class” interchangeably throughout our analysis. We use the free or reduced-price lunch status classification as a metric for individual poverty, and we use the proportion of students who are eligible for FRPL as a metric for school poverty (in our regression controls; see Figure D). The limitations of these variables to measure economic status are discussed in depth in Michelsmore and Dynarski’s (2016) study. FRPL statuses are nevertheless valid and widely used proxies of low(er) SES, and students’ test scores are likely to reflect such disadvantage (Carnoy and García 2017).

6. Under the Individuals with Disabilities Education Act (IDEA), an IEP must be designed for each student with a disability. The IEP “guides the delivery of special education supports and services for the student” (U.S. Department of Education 2000). For more information about IDEA, see U.S. Department of Education n.d.
7. Students are grouped by gender, race/ethnicity and ELL status, FRPL eligibility, and IEP status.
8. The U.S. Department of Education (2016) defines “chronically absent” as “missing at least 15 days of school in a year.” Ready (2010) explains the difference between legitimate or illegitimate absences, which may respond to different circumstances and behaviors. Ready’s findings, pertaining to children at the beginning of school, indicate that, relative to high-SES students, low-SES children with good attendance rates experienced greater gains in literacy skills during kindergarten and first grade, narrowing the starting gaps with their high-SES peers. No differences in math skills gains were detected in kindergarten.
9. U.S. Department of Education 2016. This report uses data from the Department of Education’s Civil Rights Data Collection 2013–2014.
10. The analysis finds no differences in absenteeism by gender. It is notable that the Department of Education report finds that ELL students have lower absenteeism rates than their non-ELL peers, given that we find (as described later in the report) that Asian ELL students have higher absenteeism rates than Asian non-ELL students and that Hispanic ELL students have higher absenteeism rates than Hispanic non-ELL students. It is important to note, however, that the data the Department of Education analyze compared *all* ELL students to *all* non-ELL students (not only Asian and Hispanic students separated out by ELL status), and thus our estimates are not directly comparable.
11. Children in the fourth and eighth grades were asked, “How many days were you absent from school in the last month?” The possible answers are: none, 1–2 days, 3–4 days, 5–10 days, and more than 10 days. An important caveat concerning this indicator and results based on its utilization is that there is a potential inherent censoring problem: Children who are more likely to miss school are also likely to miss the assessment. In addition, some students may be inclined to underreport the number of days that they missed school, in an effort to be viewed more favorably (in social science research, this may introduce a source of response-bias referred to as “social desirability bias”). Although we do not have any way to ascertain the extent to which these might be problems in the NAEP data and for this question in particular, it is important to read our results and findings as a potential underestimate of what the rates of missingness are, as well as what their influence on performance is.
12. One reason to look at different grades is to explore the potential connection between early absenteeism and later absenteeism. Ideally, we would be able to include data on absenteeism from earlier grades in students’ academic careers since, as Nai-Lin Chang, Sundius, and Wiener (2017) explain, attendance habits are developed early and often set the stage for attendance patterns later on. These authors argue that detecting absenteeism early on can improve pre-K to K transitions, especially for low-income children, children with special needs, or children who experience other challenges at home; these are the students who most need the social, emotional, and academic supports that schools provide and whose skills are most likely to be negatively influenced by missing school. Gottfried (2014) finds reduced reading and math achievement outcomes, and lower educational and social engagement, among kindergartners who are chronically absent. Even though we do not have information on students’ attendance patterns at the earliest grades, looking at patterns in the fourth and eighth grades can be illuminating.

13. Students are excluded from our analyses if their absenteeism information and/or basic descriptive information (gender, race/ethnicity, poverty status, and IEP) are missing.
14. All categories combined, we note that in 2015, 49.5 percent of fourth-graders and 55.6 percent of eighth-graders missed at least one day of school in the month prior. Just over 30 percent of fourth-graders and 36.4 percent of eighth-graders missed 1–2 days of school during the month.
15. In the sample, 52.1 percent of students are white, 14.9 percent black, 4.5 percent Hispanic ELL, 19.4 percent Hispanic non-ELL, less than 1 percent Asian ELL, 4.7 percent Asian non-ELL, and 3.8 percent Native American or other.
16. Of the students in the sample, 47.8 percent are not eligible for FRPL, 5.2 percent are eligible for reduced-price lunch, and 47.0 percent are eligible for free lunch.
17. In the 2015 eighth-grade mathematics sample, 10.8 percent of students had an IEP.
18. For students who were eligible for reduced-price lunch (somewhat poor students), shares of students absent three or more days also decreased, but more modestly, by 3.3 percentage points.
19. Number of states is out of 51; the District of Columbia is included in the state data.
20. The results discussed below cannot be interpreted as causal, strictly speaking. They are obtained using regression models with controls for the relationship between performance and absenteeism (estimates are net of individual, home, and school factors known to influence performance and are potential sources of selection). However, the literature acknowledges a causal relationship between (high-quality) instructional time and performance, in discussions about the length of the school day (Kidroni and Lindsay 2014; Jin Jez and Wassmer 2013; among others) and the dip in performance children experience after being out of school for the summer (Peterson 2013, among others). These findings could be extrapolable to our absenteeism framework and support a more causal interpretation of the findings of this paper.
21. Observations with full information are used in the regressions. The absenteeism–performance relationship is only somewhat sensitive to including traditional covariates in the regression (not shown in the tables; results available upon request). The influence of absenteeism on performance is distinct and is not due to any mediating effect of the covariates that determine education performance.
22. Asian ELL students who miss more than 10 days of school are very far behind Asian ELL students with perfect attendance, with a gap of more than a standard deviation. This result needs to be interpreted with caution, however, as it is based on a very small fraction of students for whom selection may be a concern, too.
23. The data used in our analysis are for years prior to the implementation of measures intended to tackle absenteeism. See Education Week 2017. Data for future (or more recent) years will be required to analyze whether Connecticut’s policies have had an effect on absenteeism rates in the state.

References

- Balfanz, Robert, and Vaughan Byrnes. 2012. *The Importance of Being in School: A Report on Absenteeism in the Nation's Public Schools*. Johns Hopkins University Center for Social Organization of Schools, May 2012.
- Carnoy, Martin, and Emma García. 2017. *Five Key Trends in U.S. Student Performance: Progress by Blacks and Hispanics, the Takeoff of Asians, the Stall of Non-English Speakers, the Persistence of Socioeconomic Gaps, and the Damaging Effect of Highly Segregated Schools*. Economic Policy Institute, January 2017.
- Education Week. 2017. *School Accountability, School Quality and Absenteeism under ESSA* (Expert Presenters: Hedy Chang and Charlene Russell-Tucker) (webinar).
- Ehrlich, Stacy B., Julia A. Gwynne, Amber Stitzel Pareja, and Elaine M. Allensworth with Paul Moore, Sanja Jagesic, and Elizabeth Sorice. 2013. *Preschool Attendance in Chicago Public Schools: Relationships with Learning Outcomes and Reasons for Absences*. The University of Chicago Consortium on Chicago School Research, September 2013.
- ESSA. 2015. *Every Student Succeeds Act of 2015*, Pub. L. No. 114-95 § 114 Stat. 1177 (2015–2016).
- FutureEd. 2017. *Chronic Absenteeism and the Fifth Indicator in State ESSA Plans*. Georgetown University.
- García, Emma. 2014. *The Need to Address Noncognitive Skills in the Education Policy Agenda*. Economic Policy Institute, December 2014.
- García, Emma. 2015. *Inequalities at the Starting Gate: Cognitive and Noncognitive Skills Gaps between 2010–2011 Kindergarten Classmates*. Economic Policy Institute, June 2015.
- García, Emma, and Elaine Weiss. 2016. *Making Whole-Child Education the Norm. How Research and Policy Initiatives Can Make Social and Emotional Skills a Focal Point of Children's Education*. Economic Policy Institute, August 2016.
- García, Emma, and Elaine Weiss. 2017. *Education Inequalities at the School Starting Gate: Gaps, Trends, and Strategies to Address Them*. Economic Policy Institute, September 2017.
- Gottfried, Michael A. 2014. "Chronic Absenteeism and Its Effects on Students' Academic and Socioemotional Outcomes." *Journal of Education for Students Placed at Risk* 19, no. 2: 53–75. <https://doi.org/10.1080/10824669.2014.962696>.
- Gottfried, Michael A., and Stacy B. Ehrlich. 2018. "Introduction to the Special Issue: Combating Chronic Absence." *Journal of Education for Students Placed at Risk* 23, no. 1–2: 1–4. <https://doi.org/10.1080/10824669.2018.1439753>.
- Jin Jez, Su, and Robert W. Wassmer. 2013. "The Impact of Learning Time on Academic Achievement." *Education and Urban Society* 47, no. 3: 284–306. <https://doi.org/10.1177/0013124513495275>.
- Kidronl, Yael, and Jim Lindsay. 2014. *The Effects of Increased Learning Time on Student Academic and Nonacademic Outcomes: Findings from a Meta-Analytic Review*. REL 2014-015. Regional Educational Laboratory Appalachia.

Micheltmore, K., and S. Dynarski. 2016. *The Gap within the Gap: Using Longitudinal Data to Understand Income Differences in Student Achievement*. National Bureau of Economic Research Working Paper no. 22474.

Nai-Lin Chang, Hedy, Jane Sundius, and Louise Wiener. 2017. “Using ESSA to Tackle Chronic Absence from Pre-K to K–12” (blog post). National Institute for Early Education Research website, May 23, 2017.

National Center for Education Statistics (NCES), National Assessment of Educational Progress (NAEP). Various years. NAEP microdata (unpublished data).

Peterson, T.K., ed. 2013. *Expanding Minds and Opportunities: Leveraging the Power of Afterschool and Summer Learning for Student Success*. Washington, D.C.: Collaborative Communications Group.

Ready, Douglas D. 2010. “Socioeconomic Disadvantage, School Attendance, and Early Cognitive Development: The Differential Effects of School Exposure.” *Sociology of Education* 83, no. 4: 271–286. <https://doi.org/10.1177/0038040710383520>.

U.S. Department of Education. 2000. *A Guide to the Individualized Education Program*. Office of Special Education and Rehabilitative Services, July 2000.

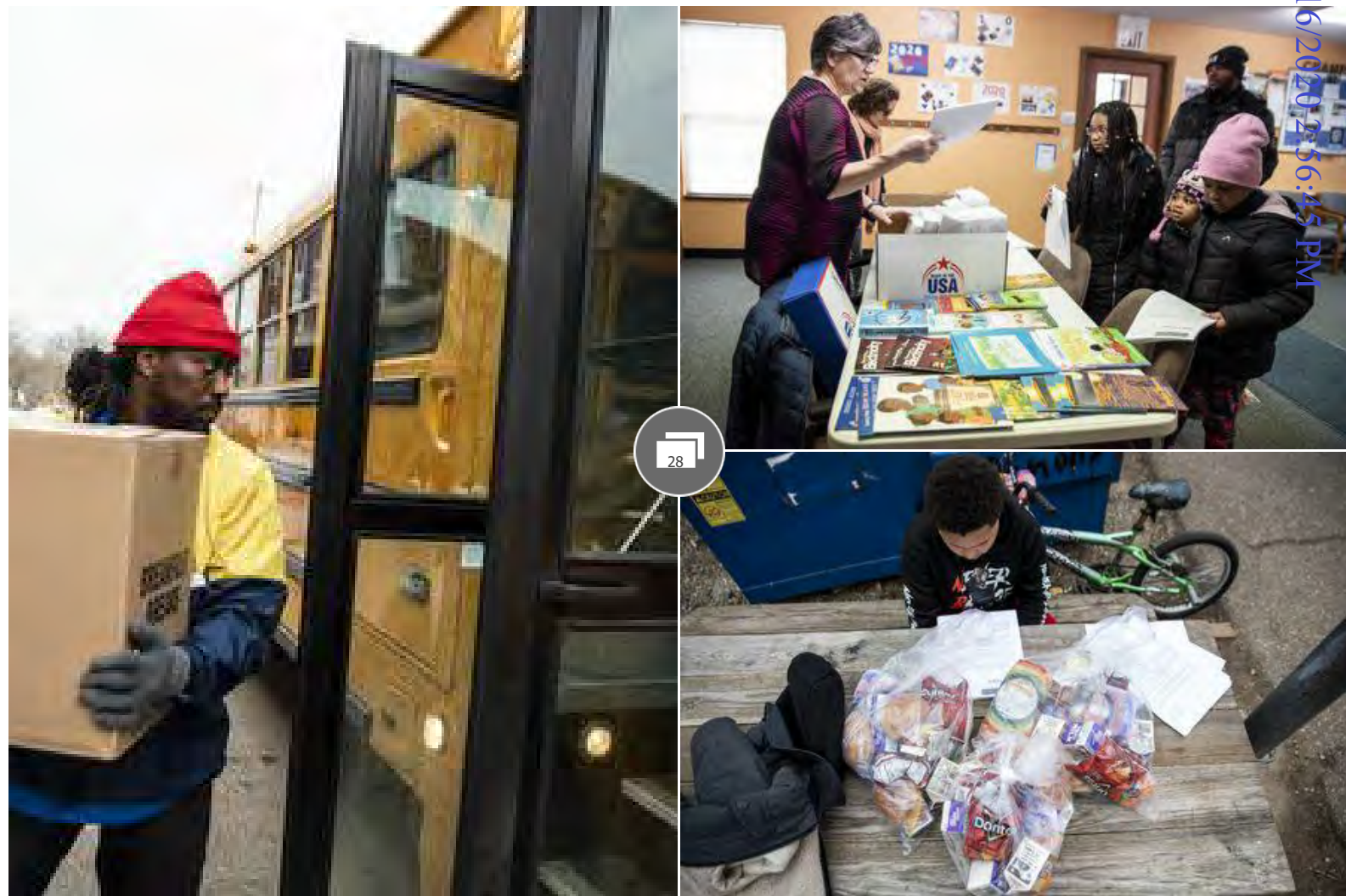
U.S. Department of Education. 2016. *Chronic Absenteeism in the Nation’s Schools: An Unprecedented Look at a Hidden Educational Crisis* (online fact sheet).

U.S. Department of Education. n.d. “About IDEA” (webpage). *IDEA (Individuals with Disabilities Education Act) website*. Accessed September 19, 2018.

EXHIBIT 7

Whitmer orders all Michigan schools to remain closed through academic year as coronavirus cases surge

Updated Apr 02, 2020 Posted Apr 02, 2020



Kalamazoo Public Schools distributes packaged lunches and work packets

28.4k shares

By [Malachi Barrett](#) [mbarret1](#) [mlive.com](#)

Michigan Gov. Gretchen Whitmer ordered all K-12 schools to remain closed throughout the academic year to prevent the further spread of the coronavirus.

The governor signed an [executive order](#) Thursday ordering all K-12 schools closed for the remainder of the school year, which typically ends in June. The Michigan Association of Intermediate School Administrators and the Michigan Council of Charter School Authorizers are developing resources for teachers to offer online learning.

My number one priority right now is protecting Michigan families from the spread of COVID-19, Whitmer said in a Thursday release. For the sake of our students, their families, and the more than 100,000 teachers and staff in our state, I have made the difficult decision to close our school facilities for the remainder of the school year.

[Watch live Gov. Whitmer to announce extension of -12 school closures](#)

The governor said it's unsafe for students to return to classrooms while the number of COVID-19 cases found each day sharply rises. The infectious respiratory disease, believed to spread quickly between people in close proximity, has killed 337 people and infected 9,334 as of Wednesday.

Given (the) virus's aggressively persistent spread and potentially fatal consequences, in-person instruction in our schools is too dangerous to resume in the near future, and very likely for the remainder of the 2019- 2020 school year, Whitmer's order states.

Whitmer's order applies to all public, private and boarding school buildings in Michigan. It leaves open the possibility of classes resuming if restrictions on public gatherings are lifted before the end of the academic year.

School districts across the state are ordered to implement a process to allow high school seniors to graduate and move younger students on to the next grade.

Students will be awarded credit and grades for courses taken based on coursework through March 11. Districts can require graduating seniors to take an optional final exam or other activities to test their understanding of course material or allow seniors to graduate by proving their competency in other ways.

Districts must provide high school seniors who were failing a course as of March 11, an opportunity to receive credit for the course, as determined by the district.

All public universities have [canceled or suspended in-person classes](#).

READ MORE [How to find free lunch for Michigan kids with schools shut down](#)

Students who rely on schools to provide meals have still been able to [pick up lunches](#) while classrooms are closed. Schools [across the state](#) are providing food to students at designated [pickup locations or school bus stops](#).

The governor ordered all school buildings closed from March 16 through April 5 as part of statewide efforts to slow the spread of coronavirus. That was changed to April 14 when Whitmer issued a sweeping executive order to close businesses and require people to stay in their homes.

Chart Area

* Total recovered is people alive 30 days post-onset (Updated every Saturday).

Graphic by [Scott Levin](#) | slevin@mlive.com | Data by [MDHHS](#)

[Cloud Database](#) by Caspio

The governor indicated in interviews during the last week that she had been having conversations about closing classrooms for the year.

Michigan's COVID-19 cases are all but assured to reach 10,000 when the state releases its daily totals Thursday afternoon. The first case was found on March 10.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions, Whitmer's order reads.

Only 1% of Michigan's confirmed [COVID-19 cases](#) are residents under 19 years old, [according to the state](#).

Sixty-seven of Michigan's 83 counties are home to [confirmed coronavirus cases](#). Mackinac County joined the list Wednesday with its first confirmed case.

Nearly half of all cases are in Wayne County. More than a quarter of Michigan's COVID-19 cases were found in Detroit.

The majority of cases remain in Wayne, Oakland and Macomb counties. Michigan's three most populated counties accounted for 80% of the cases and almost 88% of the state's deaths from COVID-19. The trio of counties are home to 39% of Michigan residents.

There have been more than 186,000 [cases of the coronavirus](#) and more than 3,600 deaths in the United States . Michigan ranks third in the country for the most COVID-19 cases discovered, behind New York and New Jersey and trending close to California.

Public health officials believe the number of cases confirmed so far represents a fraction of the total number of people who are infected. More cases are found as testing becomes more available.

Read all of MLive's coverage on [the coronavirus at mlive.com/coronavirus](#) .

Additional information is available at [Michigan.gov/Coronavirus](#) and [CDC.gov/Coronavirus](#) .

CORONA VIRUS PREVENTION TIPS

In addition to [washing hands regularly and not touching your face](#) , officials recommend practicing social distancing, assuming anyone may be carrying the virus. Health officials say you should be staying at least 6 feet away from others and working from home, if possible. [Carry hand sanitizer with you](#) , and use [disinfecting wipes](#) or [disinfecting spray cleaners on frequently-touched surfaces](#) in your home (door handles, faucets, countertops) and when you go into places like stores.

Read more on MLive

[Michigan unemployment claims spike as coronavirus cases continue rapid growth](#)

[Michigan on the cusp of a pretty dramatic upswing in COVID-19 cases, Gov. Gretchen Whitmer says](#)

[Michigan closes in on 10,000 confirmed coronavirus cases with largest single-day jump](#)

[Thursday, April 2: Latest developments on coronavirus in Michigan](#)

[Trump urged by Michigan Republicans, Democrats to back off attacks on Gov. Whitmer's coronavirus response](#)

[Whitmer's proposed 70-day emergency extension for coronavirus response too long, Senate leader says](#)

EXHIBIT 8



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

GARLIN GILCHRIST
LT. GOVERNOR

RECEIVED by MSC 12/16/2020 2:56:45 PM

SECRETARY OF SENATE
2020 APR 2 AM 10:19

EXECUTIVE ORDER

No. 2020-35

Provision of K-12 education during the remainder of the 2019-2020 school year

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine or antiviral treatment for this disease.

On March 10, 2020, the Michigan Department of Health and Human Services identified the first two presumptive-positive cases of COVID-19 in Michigan. On that same day, I issued Executive Order 2020-4. This order declared a state of emergency across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, 1976 PA 390, as amended, MCL 30.401-421, and the Emergency Powers of the Governor Act of 1945, 1945 PA 302, as amended, MCL 10.31-.33.

In the three weeks that followed, the virus spread across Michigan, bringing deaths in the hundreds, confirmed cases in the thousands, and deep disruption to this state's economy, homes, and educational, civic, social, and religious institutions. In response to the widespread and severe health, economic, and social harms posed by the COVID-19 pandemic, I issued Executive Order 2020-33 on April 1, 2020. This order expanded on Executive Order 2020-4 and declared both a state of emergency and a state of disaster across the state of Michigan under section 1 of article 5 of the Michigan Constitution of 1963, the Emergency Management Act, and the Emergency Powers of the Governor Act of 1945.

The Emergency Management Act vests the governor with broad powers and duties to "cop[e] with dangers to this state or the people of this state presented by a disaster or emergency," which the governor may implement through "executive orders, proclamations, and directives having the force and effect of law." MCL 30.403(1)-(2). Similarly, the Emergency Powers of the Governor Act of 1945 provides that, after declaring a state of emergency, "the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control." MCL 10.31(1).

The COVID-19 pandemic has already required, among other things, the closure of elementary and secondary schools throughout the state. Given virus's aggressively persistent spread and potentially fatal consequences, in-person instruction in our schools is too dangerous to resume in the near future, and very likely for the remainder of the 2019-2020 school year. Nonetheless, as section 1 of article 8 of the Michigan Constitution provides, "schools and the means of education shall forever be encouraged." In the face of this pandemic, the education of K-12 students must continue as fully and effectively as possible. While there is no substitute for a highly trained and experienced teacher interacting with students in a classroom, schools must continue to provide, and students must continue to receive, the highest level of educational opportunities possible under the difficult circumstances now before us. To do so, schools and students alike must be enabled to innovate and adapt, and those efforts must not be unduly inhibited by requirements or restrictions that are misplaced in this time of unprecedented crisis.

Accordingly, to mitigate the spread of COVID-19, protect the health and safety of this state and its residents, and ensure the ongoing encouragement of education enshrined in this state's constitution, it is reasonable and necessary to temporarily suspend in-person instruction of K-12 students and provide limited and temporary relief from certain restrictions and requirements so that K-12 education may continue by the best alternative means possible.

Acting under the Michigan Constitution of 1963 and Michigan law, I order the following:

I. Suspension of in-person K-12 instruction for the remainder of 2019-2020 school year

- A. Except as provided in section III of this order, in-person instruction for pupils in kindergarten through grade 12 ("K-12") is suspended for the remainder of the 2019-2020 school year and school buildings used for the provision of K-12 education must remain closed for the purpose of providing K-12 education in person for the remainder of the 2019-2020 school year, unless restrictions on public gatherings and use of school buildings are lifted before the end of the 2019-2020 school year. K-12 school sports activities and other in-person extracurricular school activities are suspended while any state of emergency or state of disaster prompted by COVID-19 is in effect. This section I.A applies to all public, nonpublic, and boarding schools in the state.
- B. For a district implementing a Continuity of Learning and COVID-19 Response Plan ("Plan") pursuant to section II of this order, all of the following apply:
 - 1. Strict compliance with rules and procedures under subdivisions (d) to (f) of subsection (3) of section 101 of the State School Aid Act of 1979 ("School Aid Act"), 1979 PA 94, as amended, MCL 388.1701(3)(d) to (f), is temporarily suspended for the period beginning on March 11, 2020 and ending on the last day of the 2019-2020 school year, so as to waive any requirement that a district have a minimum number of the district's membership in attendance on any day of pupil instruction and waive any requirement that a district report the percentage of the district's membership in attendance to the Department of Education ("Department").

2. Strict compliance with rules and procedures under sections 101(3)(a), 101(3)(b), 101(4), 101(6), and 101(10) of the School Aid Act, MCL 388.1701(3)(a), 388.1701(3)(b), 388.1701(4), 388.1701(6), and 388.1701(10), requiring a district to provide at least 1,098 hours and 180 days of pupil instruction, is temporarily suspended so as to provide for the following additional exceptions to the requirement to provide at least 1,098 hours and 180 days of pupil instruction that must be counted as hours and days of pupil instruction:
 - (a) In addition to counting as hours and days of pupil instruction under section 101(4) of the School Aid Act, MCL 388.1701(4), the first six days or the equivalent number of hours for which pupil instruction is not provided because of conditions not within the control of school authorities, the Department shall count up to 13 additional days or the equivalent number of hours for which pupil instruction is not provided due to a closure of schools pursuant to an executive order issued by the governor in response to the COVID-19 state of emergency and/or state of disaster.
 - (b) Under section 101(10) of the School Aid Act, MCL 388.1701(10), a district also may count an additional five days or the equivalent number of hours used for the purpose of preparing to provide and providing instruction by alternative modes of instruction pursuant to a Plan as days or an equivalent number of hours of pupil instruction.
3. Strict compliance with rules and procedures under section 101(9) of the School Aid Act, MCL 388.1701(9), is temporarily suspended so as to permit a district that has a Department-approved alternative education program or another innovative program approved by the Department under MCL 388.1701(9) and that does not use a 100% online model of delivery approved before the effective date of this order to use the additional exceptions provided for in section I.B.2 of this order in satisfying the number of days and hours of instruction required under a waiver granted by the Department under section 101(9).
4. Strict compliance with rules and procedures under section 101(9) of the School Aid Act, MCL 388.1701(9), is temporarily suspended so as to waive the minimum number of hours and days of pupil instruction required under section 101(3) of the School Aid Act, MCL 388.1701(3), for any district with a Plan approved under section II of this order. A district with a Plan approved under section II of this order will be considered to be operating a Department-approved alternative education program or another innovative program approved by the Department for the remainder of the 2019-2020 school year only. A district with a Plan approved under section II of this order is not subject to forfeiture of money under section 101 of the School Aid Act, MCL 388.1701. If the district does not comply substantially with the terms of the Plan, the amount of any forfeiture under MCL 388.1701 will be calculated based upon a comparison of the number of hours and days of pupil instruction provided to the minimum number of hours and days of pupil instruction required under MCL 388.1701(3), as affected by this order. A district with a Plan approved under section II of this order is not required to report to the Center the pupils enrolled in a Department-approved alternative education program under MCL 388.1701(9).

- C. A school of excellence that is a cyber school, as defined in section 551 of the Revised School Code ("School Code"), 1976 PA 451, as amended, MCL 380.551, and is in compliance with section 553a of the School Code, MCL 380.553a, may continue to educate pupils in a manner consistent with section I.A of this order, and continues to be exempt from the requirements of subsections (3) and (8) of section 101 of the School Aid Act, MCL 388.1701(3) and (8).
- D. If before March 11, 2020, a district was providing nonessential elective courses to nonpublic school and/or homeschool pupils at either a district, intermediate district, or nonpublic school site pursuant to section 166b of the School Aid Act, MCL 388.1766b, and is able to continue to offer the nonessential elective courses through alternative modes of instruction, then the district may, to the extent feasible, provide for such courses in its Plan and continue to offer the nonessential elective courses to nonpublic school and/or homeschool pupils through alternative modes of instruction for the remainder of the 2019-2020 school year.
- E. Nothing in this order alters the inapplicability of subsections (3) and (8) of section 101 of the School Aid Act, MCL 380.1701(3) and (8), to eligible pupils enrolled in a dropout recovery program that meets the requirements of section 23a of the School Aid Act, MCL 388.1623a. As used in this section I.E, "eligible pupil" means that term as defined in MCL 388.1623a.
- F. The approval of the Superintendent of Public Instruction ("Superintendent") or the Department is not required for a district to make use of a waiver provided for under section I.B of this order.
- G. Strict compliance with rules and procedures under section 6(7)(b) of the School Aid Act, MCL 388.1606(7)(b), is temporarily suspended to eliminate the requirement during the 2019-2020 school year for a district or intermediate district maintaining school during the entire school year to use the fourth Wednesday in April as a pupil membership count day.
- H. Strict compliance with rules and procedures under sections 1284 and 1284a of the School Code, MCL 380.1284 and 380.1284a, is temporarily suspended as necessary to facilitate implementation of this section I.
- I. Strict compliance with rules and procedures under 104b(4)(b) of the School Aid Act, MCL 388.1704b(4)(b), is temporarily suspended as necessary to permit a district to include each day that a pupil is deemed in attendance under this section I or pursuant to a Plan under section II of this order as a day the pupil was in attendance at school during the 2019-2020 school year for purposes of MCL 388.1704b(4)(b).

II. Continuity of Learning and COVID-19 Response Plans

- A. By April 3, 2020, the Department, in collaboration with the Michigan Association of Intermediate School Administrators and the Michigan Council of Charter School Authorizers, shall develop and distribute a model template for a Plan provided for in this section II.

- B. A Plan must include all of the following elements and be consistent with the requirements of this order:
1. A description of the methods a district will use to provide alternative modes of instruction other than in-person instruction and a summary of materials each pupil and the pupil's parents or guardians will need to meaningfully access the alternative modes of instruction included in the Plan. If the Plan relies on electronic instruction, the Plan must ensure to the extent feasible that pupils have access to a connected device capable of accessing the electronic instruction and must not penalize a pupil for the pupil's inability to fully participate.
 2. A description of the methods a district will use to keep pupils at the center of educational activities, including outreach to continue building relationships and maintain connections, and to help pupils feel safe and valued.
 3. A description of plans to deliver content in multiple ways so that all pupils can access learning.
 4. A description of plans to manage and monitor learning by pupils.
 5. A budget outline estimating additional expenditures associated with the Plan and sources of revenue to pay for those expenditures.
 6. A description of the manner in which district administrators, board members, teachers, and any representatives of teachers collaborated in development of the Plan.
 7. A description of methods the district will use to notify pupils and parents or guardians of the Plan.
 8. A best estimate of the date on which the district will begin implementation of the Plan, which must be no later than April 28, 2020.
 9. Provide for assistance, to the extent feasible, to pupils enrolled in any postsecondary dual enrollment courses under the Postsecondary Enrollment Options Act, 1996 PA 160, as amended, MCL 388.511 to 388.524, and the Career and Technical Preparation Act, 2000 PA 258, as amended, MCL 388.1901 to 388.1913, in completing the courses during the 2019-2020 school year.
 10. Provide or arrange for continuation of food distribution to eligible pupils.
 11. Continue to pay school employees while redeploying staff to provide meaningful work in the context of the Plan, subject to any applicable requirements of a collective bargaining agreement.
 12. Provide for evaluation of participation in the Plan by pupils.
 13. Provide mental health supports to pupils affected by a state of emergency or state of disaster prompted by COVID-19.

14. Provide for the district to support the efforts of the intermediate district in which the district is located to mobilize disaster relief child care centers as described in Executive Order 2020-16 or any executive order that may follow it.
- C. A Plan may provide for the adoption of a balanced calendar instructional program for the remainder of the 2019-2020 school year and planning for the adoption of a balanced calendar instructional program for the 2020-2021 school year.
 - D. A district may contract with one or more providers for implementation of a Plan.
 - E. If a district lacks the capacity to implement a Plan on its own, a district may partner with one or more other districts or intermediate districts. A district may enter into one or more cooperative agreements under section 11a(4) of the School Code, MCL 380.11a(4), to provide for implementation of a Plan.
 - F. For a district that is not a public school academy, the district's Plan must be approved by the intermediate superintendent of the intermediate district in which the district is located. For a district that is a public school academy, the district's Plan must be approved by the authorizing body of the public school academy or the authorizing body's designee for the purpose of administering contracts with public school academies. For a public school academy that by agreement provides public educational services for the residents of a district that does not directly provide public educational services to the residents on its own, the public school academy's Plan must be approved by the intermediate superintendent of the intermediate district in which the public school academy is located. If an intermediate district educates K-12 students, the intermediate district may adopt a Plan for those activities and implement the Plan once adopted. A school of excellence that is a cyber school, as defined in section 551 of the School Code, MCL 380.551, and is in compliance with section 553a of the School Code, MCL 380.553a, may continue to educate pupils under its charter contract which will be that school's Plan.
 - G. An intermediate district or an authorizing body shall approve a Plan submitted by a district if the Plan complies with the requirements of this section II and if the intermediate district or authorizing body believes the Plan represents a good-faith effort to provide adequate alternative modes of instruction given the limitations resulting from the COVID-19 pandemic and accompanying response efforts. Intermediate districts and authorizing bodies must allow for flexibility and presume that a Plan submitted by a district will be implemented to the best of the district's ability.
 - H. Intermediate districts and authorizing bodies shall transmit copies of approved Plans to the Superintendent and to the State Treasurer. If a district or intermediate district maintains a public internet site, the district or intermediate district shall post its approved Plan on the internet site.
 - I. An intermediate district may enter into a cooperate agreement with one or more other intermediate districts for the purpose of reviewing and approving Plans under this order.

- J. An intermediate district or authorizing body that reviews and approves or disapproves Plans on its own or with others pursuant to this section II will be eligible for any additional funding appropriated to support these activities. An intermediate district or authorizing body that does not review and approve or disapprove Plans will not be eligible for any additional funding appropriated.
- K. Intermediate districts and authorizing bodies must be prepared to review and approve or reject Plans beginning on April 8, 2020.
- L. A district with an approved Plan is eligible to receive continued payments from the State School Aid Fund for the 2019-2020 school year.
- M. A district that is not a public school academy may amend its Plan with the approval of the intermediate superintendent of the intermediate district in which the school district is located. A district that is a public school academy may amend its Plan with the approval of its authorizing body or its designee. For a public school academy that by agreement provides public educational services for the residents of a district that does not directly provide public educational services to the residents on its own, the public school academy's Plan may be amended with the approval of the intermediate superintendent of the intermediate district in which the public school academy is located.
- N. Decisions regarding the awarding of credit, the issuance of grades, and the use of pass or fail designations will be made at the district level by districts with due recognition of the impact of the COVID-19 pandemic.
- O. State-approved nonpublic schools and parents and guardians homeschooling students are encouraged to do all of the following:
 - 1. Offer all students electronic, other remote, or home-based instruction, to the extent feasible, for the remainder of the 2019-2020 school year, including course offerings provided by the Michigan Virtual School.
 - 2. Coordinate with districts providing nonessential elective courses under section 166b of the School Aid Act, MCL 388.1766b, to any of their students for the remainder of the 2019-2020 school year.
 - 3. Assist eligible nonpublic school students to complete postsecondary dual enrollment courses, to the extent feasible, under the Postsecondary Enrollment Options Act, 1996 PA 160, as amended, MCL 388.511 to 388.524, and the Career and Technical Preparation Act, 2000 PA 258, as amended, MCL 388.1901 to 388.1913.
 - 4. Take actions necessary to continue to receive any federal funding previously allocated in a manner consistent with applicable federal law.

III. District employees permitted in district buildings

- A. Notwithstanding the closure of school buildings under Executive Order 2020-11 or any executive order that may follow it, district employees or contractors necessary to conduct minimum basic school operations consistent with a Plan, including those employers or contractors necessary to facilitate alternative modes of instruction, such as distributing materials and equipment, or performing other necessary in-person functions, are permitted to be physically present in district buildings, as determined by district administrators. District employees and contractors performing these functions are considered to be performing necessary government activities for purposes of Executive Order 2020-21 or any executive order that may follow it. Districts must adopt social distancing practices and other mitigation measures to protect district employees and contractors, including all of the following:
1. Restricting the number of employees and contractors present in a district building to no more than is strictly necessary to perform the activities authorized by this section III.
 2. Promoting remote work to the fullest extent possible.
 3. Keeping employees and contractors in a district building at least six feet from one another to the maximum extent possible.
 4. Increasing standards of district building cleaning and disinfection to limit employee and contractor exposure to COVID-19, as well as adopting protocols to clean and disinfect in the event of a positive COVID-19 case in a district building.
 5. Adopting policies to prevent employees and contractors from entering the premises if they display respiratory symptoms or have had contact with a person who is known or suspected to have contracted COVID-19.
 6. Any other social distancing practices and mitigation measures relating to COVID-19 recommended by the Centers for Disease Control and Prevention.
- B. A district may permit parents and guardians of pupils to visit school property for the purpose of obtaining materials and equipment pursuant to a Plan and using the same social distancing and other mitigation measures required for district employees and contractors under section III.A. Parents or guardians leaving their homes or residences for this purpose are considered to be obtaining necessary services or supplies for purposes of Executive Order 2020-21 or any executive order that may follow it.
- C. Any child care workers at a child care located within a district building (including workers at disaster relief child care centers), are permitted to be physically present in district buildings, as determined by district administrators and to the extent permitted by Executive Order 2020-21 or any executive order that may follow it.

IV. Assessments

- A. Plans are not required to address the following provisions of the Elementary and Secondary Education Act of 1965 ("ESEA") that have been waived by the United States Department of Education for the 2019-2020 school year pursuant to section 8401(b) of the ESEA, 20 USC 7861(b):
 1. Assessment requirements under section 1111(b)(2) of the ESEA, 20 USC 6311(b)(2).
 2. Report card provisions related to certain assessments and accountability in section 1111(h) of the ESEA, 20 USC 6311(h) based on data from the 2019-2020 school year, including all of the following:
 - (a) Section 1111(h)(1)(C)(i) of the ESEA, 20 USC 6311(h)(1)(C)(i) (accountability system description).
 - (b) Section 1111(h)(1)(C)(ii) of the ESEA, 20 USC 6311(h)(1)(C)(ii) (assessment results).
 - (c) Section 1111(h)(1)(C)(iii)(1) of the ESEA, 20 USC 6311(h)(1)(C)(iii)(1) (other academic indicator results).
 - (d) Section 1111(h)(1)(C)(iv) of the ESEA, 20 USC 6311(h)(1)(C)(iv) (English language proficiency assessment results).
 - (e) Section 1111(h)(1)(C)(v) of the ESEA, 20 USC 6311(h)(1)(C)(v) (school quality or student success indicator results).
 - (f) Section 1111(h)(1)(C)(vi) of the ESEA, 20 USC 6311(h)(1)(C)(vi) (progress toward meeting long-term goals and measurements of interim progress).
 - (g) Section 1111(h)(1)(C)(vii) of the ESEA, 20 USC 6311(h)(1)(C)(vii) (percentage of students assessed and not assessed).
 - (h) Section 1111(h)(1)(C)(xi) of the ESEA, 20 USC 6311(h)(1)(C)(xi), (number and percentage of students with the most significant cognitive disabilities taking an alternate assessment).
 - (i) Section 1111(h)(2) of the ESEA, 20 USC 6311(h)(2), with respect to all waived requirements in section 1111(h)(1)(C) of ESEA, 20 USC 6311(h)(1)(C).
 - (j) Section 1111(h)(2)(C)(i) to (ii) of the ESEA, 20 USC 6311(h)(2)(C)(i) to (ii) (information showing how students in a local educational agency ("LEA") and each school, respectively, achieved on the academic assessments compared to students in Michigan and the LEA).
- B. Strict compliance with rules and procedures under section 1279g of the School Code, MCL 380.1279g, and section 104b of the School Aid Act, MCL 388.1704b, requiring a district to administer during the 2019-2020 school year the Michigan Merit

Examination to pupils in grade 11 and to pupils in grade 12 who did not take the complete Michigan Merit Examination in grade 11, is temporarily suspended for the remainder of the 2019-2020 school year. Pupils currently in grade 11 will be administered the Scholastic Aptitude Test portion of the Michigan Merit Examination during the school day in the fall of the 2020-2021 school year as permitted by the College Board, with results from this test being used for college entrance purposes but not for school accountability purposes.

- C. Strict compliance with rules and procedures under sections 503(6)(a), 523(2)(a), 553(5)(a), and 1311e(5)(a) of the School Code, MCL 380.503(6)(a), 380.523(2)(a), 380.553(5)(a), and 380.1311e(5)(a), and under section 104c of the School Aid Act, MCL 388.1704c, is temporarily suspended so as to suspend for the remainder of the 2019-2020 school year the obligation of a district to administer the state assessments described in those sections, including the Michigan Student Test of Educational Progress ("M-STEP"), or an alternative to M-STEP such as the MI-ACCESS assessment, or other assessment taken in conjunction with the M-STEP, including the Preliminary Scholastic Aptitude Test ("PSAT") developed by the College Board. Pupils otherwise scheduled to be administered the PSAT during the school day in the 2019-2020 school year will be administered the PSAT during the school day in the fall of the 2020-2021 school year as permitted by the College Board.
- D. Strict compliance with rules and procedures under section 41 of the School Aid Act, MCL 388.1641, is temporarily suspended so as to suspend for the remainder of the 2019-2020 school year the obligation of a district to administer to English language learners the English language proficiency assessment known as the "WIDA ACCESS for English language learners" or the "WIDA Alternative ACCESS."
- E. Strict compliance with rules and procedures under section 1279g of the School Code, MCL 380.1279g, is temporarily suspended so as to suspend for the remainder of the 2019-2020 school year the obligation of a district, imposed by the Department or otherwise, to administer an assessment that assesses a pupil's ability to apply reading and mathematics skills in a manner that is intended to allow employers to use the results in making employment decisions, including the WorkKeys assessment.
- F. Strict compliance with rules and procedures under section 104 of the School Aid Act, MCL 388.1704, is temporarily suspended so as to suspend any requirement for a district to administer the Maryland-Ohio observational tool, which is also referred to as the Kindergarten Readiness Assessment.
- G. Pupils enrolled in advanced placement courses and eligible to take examinations for advanced placement courses administered by the College Board must be permitted to take the examinations using the at-home testing option provided by the College Board. Districts shall facilitate, to the extent feasible, access to information relating to advanced placement courses and course schedules provided online by the College Board. For pupils without access to the internet or a device necessary to access the internet, districts shall facilitate, to the extent feasible, access to information regarding assistance provided by the College Board in completing examination

requirements. Information relating to advanced placement courses and examinations is available at: apstudents.collegeboard.org/coronavirus-updates.

- H. Strict compliance with rules and procedures under section 1249, 1249a, 1249b, and 1250(1) of the School Code, MCL 380.1249, 380.1249a, 380.1249b, and 380.1250(1), and under section 104 of the School Aid Act, MCL 388.1704, is temporarily suspended so as to waive any requirement for assessments or other performance evaluations of teachers and district administrators during the 2019-2020 school year.
- I. Strict compliance with rules and procedures under subsections (3) and (4) of section 1250 of the School Code, MCL 380.1250(3) and (4), is temporarily suspended for the remainder of the 2019-2020 school year.

V. Pupils in grade 12

- A. A district shall implement a process to issue grades to pupils in grade 12, award credits needed for graduation, provide for completion of the Michigan Merit Curriculum, issue diplomas to pupils in grade 12, and reflect continued learning by pupils in grade 12 pursuant to this order. When implementing this section V.A, a district may, without limitation, use one or more of the following options:
 - 1. Award credits and grades for courses taken based on coursework through March 11, 2020.
 - 2. Provide an optional final exam or other culminating activity to test pupil understanding of the subject matter of a course to the extent practicable.
 - 3. Implement a process for pupils in grade 12 to be certified as eligible to graduate using a prior learning assessment, a portfolio, or a resume approach.
 - 4. Offer an interdisciplinary culminating activity that encompasses essential standards missed by pupils due to the closure of schools.
- B. Districts must provide a pupil in grade 12 who was failing a course as of March 11, 2020 an opportunity to the extent feasible to demonstrate learning in the subject matter of the course and receive credit for the course, as determined by the district.
- C. Strict compliance with rules and procedures under section 1166(2) of the School Code, MCL 380.1166(2), is temporarily suspended for the remainder of the 2019-2020 school year so as to suspend the restriction on a high school from issuing a diploma to a pupil who has not completed a one-semester course of study of five periods per week in civics.
- D. If before March 11, 2020, a district was providing a nonessential elective course to a nonpublic school pupil or homeschool pupil in grade 12 at either a district, intermediate district, or nonpublic school site pursuant to section 166b of the School Aid Act, MCL 388.1766b, and that course is required for the pupil to graduate and receive a diploma, the district must, to the extent feasible, continue to offer the

nonessential elective course to the pupil through alternative modes of instruction for the remainder of the 2019-2020 school year.

VI. Special education

- A. Districts shall strive in good faith and to the extent practicable, based upon existing resources, technology, training, and curriculum, as well as the circumstances presented by any state of emergency or state of disaster, to provide equal access to alternative modes of instruction to students with disabilities for the remainder of the 2019-2020 school year. This includes the provision of auxiliary services under section 1296 of the School Code, MCL 380.1296.
- B. While the COVID-19 state of emergency and/or state of disaster continues, districts shall comply with guidance from the United States Department of Education ("USDOE"), including its Office of Civil Rights and Office of Special Education and Rehabilitative Services, and the Department concerning the delivery of alternative modes of instruction to students with disabilities in light of the impact of COVID-19.
- C. Districts shall, to the extent practicable and necessary, make individualized determinations whether and to what extent compensatory services may be needed for pupils after the school closure period prompted by the COVID-19 state of emergency and/or state of disaster ends.
- D. A district or a nonpublic school that has been allocated federal funds for the 2019-2020 school year for the purpose of providing special education services shall not be penalized or required to repay the funds by this state due to the inability to provide those services in person during the 2019-2020 school year after March 11, 2020.
- E. Within five days of the effective date of this order, the Department and the Department of Civil Rights are strongly encouraged to submit requests for interpretation, guidance on implementation, flexibility, or waivers to USDOE that would permit districts and nonpublic schools to do one or more of the following during the remainder of the 2019-2020 school year:
 1. Deliver instruction to all pupils, including students with disabilities, without having to reconvene or amend individualized education plans ("IEPs") or Section 504 plans.
 2. Deliver direct and consultative related services such as therapies, including occupational therapy, physical therapy, speech language pathologist, social service worker, teacher consultant, and other special education services and supports, without having to reconvene or amend IEPs or Section 504 plans.
 3. Complete IEPs and Section 504 plans online, either by telephone conference or video conference, if the parents or guardians involved have access to the technology and agree to the alternative means of participation. If a parent or guardian elects not to participate in an otherwise due IEP online, a district should be permitted to extend the deadline for completion of the IEP for up to 30

school days after the school closure period prompted by the COVID-19 state of emergency and/or state of disaster ends.

4. Complete annual or otherwise due IEPs online, either by telephone conference or video conference, with those IEPs being considered timely if they are completed by the end of the 2019-2020 school year.
5. Consider whether a pupil should be provided compensatory education for pupils after the school closure period prompted by the COVID-19 state of emergency and/or state of disaster ends, based on applicable law and guidance, no later than the first annual IEP meeting of the 2020-2021 school year.
6. Consider compensatory education for pupils who are more likely to qualify for compensatory education through IEP amendments, with the authority to complete those IEP amendments online, either by telephone conference, virtual meetings, or other existing technology.
7. Other requests the Department deems necessary to facilitate the delivery of alternative modes of instruction with equal access.

F. This order does not require that an IEP be amended.

VII. Temporary suspension of certain requirements relating to the suspension of administrative rules by the Superintendent

- A. Strict compliance with rules and procedures under section 1281(3) of the School Code, MCL 380.1281(3), is temporarily suspended so as to suspend for the remainder of the 2019-2020 school year the requirement that a district, university school, or intermediate district apply for a limited time waiver from a Department rule interpreting or implementing a provision of the School Code and so as permit the Superintendent to temporarily suspend a Department rule interpreting or implementing a provision of the Code to facilitate the implementation of this order or other orders or response efforts prompted by the COVID-19 state of emergency and/or state of disaster.
- B. The Superintendent may not grant a waiver from the duty to comply with a provision of the School Code and may not grant a waiver from the duty to comply with another state statute unless and to the extent that a waiver is specifically allowed by that other state statute.

VIII. Temporary suspension of certain certification and continuing learning requirements

- A. Strict compliance with rules and procedures under section 1531(2) of the School Code, MCL 380.1531(2), is temporarily suspended so as to permit the Superintendent to issue a temporary one-year teaching certificate to an otherwise qualified individual who is unable to take an appropriate subject area examination required by MCL 380.1531(2) due to COVID-19 or accompanying response efforts.

- B. Strict compliance with rules and procedures under section 1531(3) of the School Code, MCL 380.1531(3), is temporarily suspended so as to permit the Superintendent to issue a temporary one-year teaching certificate to an individual holding a teaching certificate from another state or a teaching degree from an out-of-state teacher preparation institution who applies for a Michigan teaching certificate, is otherwise qualified, but is unable to take an appropriate subject area examination required by MCL 380.1531(3) because the examination is not offered due to COVID-19 or accompanying response efforts.
- C. Strict compliance with rules and procedures under section 1531d of the School Code, MCL 380.1531d, is temporarily suspended so as to permit the Superintendent to temporarily waive the requirement that a person seeking a teaching certificate successfully complete a course approved by the Department in first aid and cardiopulmonary resuscitation and instruction approved by the Department in foreign body airway obstruction management when the person is unable to complete the course and/or the instruction because the course and/or the instruction is not offered due to COVID-19 or accompanying response efforts.
- D. Strict compliance with rules and procedures under section 1531i(2)(c) of the School Code, MCL 380.1531i(2)(c), is temporarily suspended so as to permit the Superintendent to issue an interim teaching certificate to an otherwise qualified individual who is unable to take an appropriate subject area examination required by MCL 380.1531i(2)(c) because the examination is not offered due to COVID-19 or accompanying response efforts.
- E. Strict compliance with rules and procedures under Rule 390.1130(6) and (7) of the Michigan Administrative Code is temporarily suspended so as to permit the Superintendent to extend the duration of a 1-year temporary teacher employment authorization by an additional year if the holder of the 1-year temporary teacher employment authorization is unable to complete the requirements to obtain a Michigan teaching certificate because the requirements cannot be satisfied due to COVID-19 or accompanying response efforts.
- F. Strict compliance with rules and procedures under section 1526 of the School Code, MCL 380.1526, is temporarily suspended so as to waive for any teacher within his or her third year of employment the requirement that the teacher receive at least 15 days of professional development within the teacher's first three years of employment if the requirement could not be completed due to COVID-19 or accompanying response efforts.
- G. Strict compliance with rules and procedures under section 1527(1) of the School Code, MCL 380.1527(1), is temporarily suspended so as to waive the requirement for the 2019-2020 school year that a district or intermediate district provide at least five days of teacher professional development each year.
- H. Strict compliance with rules and procedures under section 1233(6) of the School Code, MCL 380.1233(6), is temporarily suspended so as to permit the Department to renew an individual's school counselor credential regardless of whether the

individual has completed at least 25 hours of professional development approved by the Department under MCL 380.1233(8) covering counseling about the college preparation and selection process and at least 25 hours of professional development approved by the Department under MCL 380.1233(8) covering career counseling.

IX. Implementation

- A. Strict compliance with rules and procedures under section 21f of the School Aid Act, MCL 388.1621f, is temporarily suspended so as to permit a district pursuant to an approved Plan to enroll a pupil in more than 2 virtual courses, regardless of whether the virtual course is published in a catalog of courses or a parent or guardian approves, and so as to suspend any requirement to comply with minimum requirements to count a pupil in membership established by the pupil accounting manual.
- B. Strict compliance with rules and procedures under section 1278a(4) of the School Code, MCL 380.1278a(4), is temporarily suspended so as to permit a district to determine a pupil has completed a credit without using subject area content expectations or guidelines developed by the Department.
- C. Strict compliance with rules and procedures under section 1280f(5) of the School Code, MCL 380.1280f(5), is temporarily suspended so as to relieve a district of the obligations imposed by that provision for the remainder of the 2019-2020 school year, including the obligation to retain a pupil in grade 3.
- D. Strict compliance with rules and procedures under sections 162 and 163 of the School Aid Act, MCL 388.1762 and 388.1763, is temporarily suspended so as to prevent the forfeiture of funds resulting from the implementation of this order.
- E. To mitigate the impact of COVID-19 on educational outcomes, a district may adopt year-round school or a year-round program for the 2020-2021 school year or start the 2020-2021 school year before the first Monday in September. Strict compliance with rules and procedures under sections 1284a and 1284b of the School Code, MCL 380.1284a and 380.1284b, is temporarily suspended so as to permit a district to adopt year-round school, a year-round program, or an early start for the 2020-2021 school year. Adoption of measures provided in this section IX.E may be included by a district as part of the district's Plan.
- F. Mandatory closure of schools relating to COVID-19 shall not affect an employer contribution, employee contribution, or the accrual of service credit under the Public School Employees Retirement Act of 1979, 1980 PA 300, as amended, MCL 38.1301 to 38.1467.
- G. For a district with a collective bargaining agreement, this order must be implemented by the district in a manner consistent with the collective bargaining agreement.
- H. Before the Department, the Superintendent, or the Department of Civil Rights seeks any guidance, issues a waiver, seeks a waiver relating to this order, or suspends an

administrative rule pursuant to this order, the Superintendent or the director of the Department of Civil Rights, as applicable, shall provide the governor in writing with a copy of the request or waiver and information relating to the request, waiver, or suspension, as required by section 8 of article 5 of the Michigan Constitution of 1963.

- I. To ensure management of district and intermediate district affairs and property in ways that will assist the response to the COVID-19 state of emergency and/or state of disaster, districts and intermediate districts are authorized and encouraged to donate medical personal protective equipment and supplies to healthcare providers and other necessary personnel engaged in response efforts to COVID-19.
- J. This order is effective immediately and continues through the end of the states of emergency and disaster declared in Executive Order 2020-33 or any other state of emergency or disaster declared in response to COVID-19 during the remainder of the 2019-2020 school year, with the exception of the provisions of this order relating to scheduling for the 2020-2021 school year, which will continue into the 2020-2021 school year for that purpose.

X. Definitions

As used in this order:

- A. "Alternative modes of instruction" means modes of pupil instruction, other than in-person instruction, that may include, without limitation, partnerships with other districts or intermediate districts or community colleges or institutions of higher education, use of vendors, use of online learning, telephone communications, email, virtual instruction, videos, slideshows, project-based learning, use of instructional packets, or a hybrid of multiple modes of learning that still promote recommended practices for social distancing to mitigate the spread of COVID-19.
- B. "Center" means the Center for Educational Performance and Information referenced in section 94a of the School Aid Act, MCL 388.1694a.
- C. "District" means a school district established under the School Code or a public school academy. District does not include an intermediate district, except for an intermediate district that educates K-12 students.
- D. "Intermediate district" means an intermediate school district established under part 7 of the School Code, MCL 380.601 to 380.705b.
- E. "Intermediate superintendent" means the superintendent of an intermediate district.
- F. "Membership" means that term as defined in section 6(4) of the School Aid Act, MCL 388.1606(4).
- G. "Michigan Virtual School" means the Michigan Virtual School referenced in section 98 of the School Aid Act, MCL 388.1698.

- H. "Public school academy" means that term as defined in section 5 of the School Code, MCL 380.5.
- I. "Pupil" means that term as defined in section 6(6) of the School Aid Act, MCL 388.1606(6).
- J. "Superintendent of Public Instruction" or "Superintendent" means the superintendent of public instruction described in section 3 of article 8 of the Michigan Constitution of 1963.

Given under my hand and the Great Seal of the State of Michigan.

Date: April 2, 2020

Time: 9:16 am



GRETCHEN WHITMER
GOVERNOR

By the Governor:

SECRETARY OF STATE

EXHIBIT 9



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH AND HUMAN SERVICES
LANSING

ROBERT GORDON
DIRECTOR

December 7, 2020

Emergency Order under MCL 333.2253 – Gatherings and Face Mask Order

Michigan law imposes on the Michigan Department of Health and Human Services (MDHHS) a duty to continually and diligently endeavor to “prevent disease, prolong life, and promote public health,” and gives the Department “general supervision of the interests of health and life of people of this state.” MCL 333.2221. MDHHS may “[e]xercise authority and promulgate rules to safeguard properly the public health; to prevent the spread of diseases and the existence of sources of contamination; and to implement and carry out the powers and duties vested by law in the department.” MCL 333.2226(d).

The novel coronavirus (COVID-19) is a respiratory disease that can result in serious illness or death. It is caused by a new strain of coronavirus not previously identified in humans and easily spread from person to person. There is currently no approved vaccine for this disease. COVID-19 spreads through close human contact, even from individuals who may be asymptomatic.

In recognition of the severe, widespread harm caused by epidemics, the Legislature has granted MDHHS specific authority, dating back a century, to address threats to the public health like those posed by COVID-19. MCL 333.2253(1) provides that “[i]f the director determines that control of an epidemic is necessary to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose and may establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws. Emergency procedures shall not be limited to this code.” See also *In re Certified Questions*, Docket No. 161492 (Viviano, J., concurring in part and dissenting in part, at 20) (“[T]he 1919 law passed in the wake of the influenza epidemic and Governor Sleeper’s actions is still the law, albeit in slightly modified form.”); *id.* (McCormack, C.J., dissenting, at 12). Enforcing Michigan’s health laws, including preventing disease, prolonging life, and promoting public health, requires limitations on gatherings and the establishment of procedures to control the spread of COVID-19. This includes limiting the number, location, size, and type of gatherings, and requiring the use of mitigation measures at gatherings as a condition of hosting such gatherings.

On March 10, 2020, MDHHS identified the first two presumptive-positive cases of COVID-19 in Michigan. As of December 6, 2020, Michigan had seen 395,036 confirmed cases and 6,004 confirmed deaths attributable to COVID-19. Michigan was one of the states most heavily impacted by COVID-19 early in the pandemic, with new cases peaking at nearly 2,000 per day in late March. Strict preventative measures and the cooperation of Michiganders drove daily case numbers dramatically down to less than 200 confirmed cases per day in mid-June, greatly reducing the loss of life. Beginning in October, Michigan again experienced an exponential growth in cases. Daily new cases are now over 5,000, which is roughly three times higher than what was seen in the spring.

On November 15, 2020, MDHHS issued an order to slow the high and rapidly increasing rate of spread of COVID-19. While the rate of spread has been reduced, there are still tremendously high numbers of cases, hospitalizations, and deaths, which threaten hospital and public health capacity. As changes in data lag behind changes in policy by several weeks, it is difficult to determine at this time whether the order has sufficiently reduced the rate of spread. This is particularly true where travel and gatherings for the Thanksgiving holiday are applying upward pressure on the rate of spread.

The State of Michigan presently has a seven-day average of 522.3 cases per million people, which is five times higher than the case rate on October 1. Test positivity has increased from 3.2% in early October to 14% on December 5. Rising cases create significant pressure on our emergency and hospital systems. Although complaints of coronavirus-like illness in emergency departments are now starting to decrease for the state, the current rate remains near the all-time high, and is four times higher than early October. An average of 500 daily hospital admissions were seen in Michigan in the last week, with individuals under 60 years old accounting for almost a third of all new admissions. With over 4,000 Michiganders hospitalized for COVID-19, 18% of all available inpatient beds are now occupied by patients who have COVID-19, the highest number since mid-April. The state death rate is 9.1 deaths per million people and continues to increase. The death rate is seven times higher than it was in early October, and there are more than 650 weekly deaths in Michigan. We must act to control the high rate of spread in order to save lives as we push through this difficult phase of the pandemic, and await widespread distribution of an effective COVID-19 vaccine.

To protect vulnerable individuals, ensure the health care system can provide care for all health issues, and prevent spread in schools during the influenza season, we must reduce the spread of COVID-19. This necessitates use of more forceful mitigation techniques to reduce the spread of the virus. As such, it is necessary to issue orders under the Public Health Code addressing these topics.

Considering the above, and upon the advice of scientific and medical experts, I have concluded pursuant to MCL 333.2253 that the COVID-19 pandemic continues to constitute an epidemic in Michigan. I have also, subject to the grant of authority in 2020 PA 238 (signed into law on October 22, 2020), herein defined the symptoms of COVID-19 based on the latest epidemiological evidence. I further conclude that control of the epidemic is necessary to protect the public health and that it is necessary to restrict gatherings and establish procedures to be followed during the epidemic to ensure the continuation of essential public health services and enforcement of health laws. As provided in MCL 333.2253, these emergency procedures are not limited to the Public Health Code.

I therefore order that:

1. Definitions.

- (a) "Child-care organization" means that term as defined by section 1(b) of the Child Care Organizations Act, 1973 PA 116, as amended, MCL 722.111(b)) and day, residential, travel, and troop camps for children (as defined by Rule 400.11101(1)(q) of the Michigan Administrative Code).
- (b) "Closed-campus boarding school" means a boarding school, as defined in section 3 of the Revised School Code, 1976 PA 451, as amended, MCL 380.3(4), where at least 90 percent of students reside on campus, and are prohibited from travel off campus property during the term, the campus is closed to visitors, and all staff and students who travel to and from the campus are regularly tested for COVID-19.
- (c) "Employee" means that term as defined in section 2 of the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended, MCL 408.932, and also includes independent contractors.
- (d) "Exercise facility" means a location in which individuals participate in individual or group physical activity, including gymnasiums, fitness centers, and exercise studios.
- (e) "Face mask" means a tightly woven cloth or other multi-layer absorbent material that closely covers an individual's mouth and nose.
- (f) "Food service establishment" means that term as defined in section 1107(t) of the Food Law, 2000 PA 92, as amended, MCL 289.1107(t).

- (g) “Gathering” means any occurrence, either indoor or outdoor, where two or more persons from more than one household are present in a shared space.
- (h) “Household” means a group of persons living together in a shared dwelling with common kitchen or bathroom facilities. In dwellings with shared kitchen or bathroom facilities occupied by 20 or more unrelated persons, households are defined by individuals who share a bedroom.
- (i) “Indoors” means within a space that is fully or partially enclosed on the top, and fully or partially enclosed on two or more contiguous sides. Additionally, in a space that is fully or partially enclosed on the top, and fully or partially enclosed on two non-contiguous sides, any part of that space that is more than 8 feet from an open side is indoors.
- (j) “Outdoors” means a space that is not indoors.
- (k) “Organized sports” means competitive athletic activity requiring skill or physical prowess and organized by a sports organizer.
- (l) “Sports Organizer” means an institution, association, or other organization that sets and enforces rules to ensure the physical health and safety of all participants for an organized sport.
- (m) “Symptoms of COVID-19” means at least 1 of fever, uncontrolled cough, or atypical new onset of shortness of breath, or at least 2 of the following not explained by a known physical condition: loss of taste or smell, muscle aches, sore throat, severe headache, diarrhea, vomiting, or abdominal pain. Per section 1(h) of 2020 PA 238, this definition represents the latest medical guidance, and serves as the controlling definition.

2. General capacity limitations at gatherings.

(a) Indoor gatherings:

- (1) Are prohibited at residential venues, except where no more than 10 persons from no more than 2 households are gathered. Such gatherings should be held consistent with guidance issued by the Department of Health and Human Services for such gatherings;
- (2) Are prohibited at non-residential venues.

(b) Outdoor gatherings are permitted only as follows:

- (1) At residential venues, 25 or fewer persons are gathered, comprised of no more than 3 households;
- (2) At non-residential venues:
 - (A) 25 or fewer persons are gathered at a venue without fixed seating, and attendance is limited to 20 persons per 1,000 square feet, including within any distinct area within the event space;
 - (B) 25 or fewer persons are gathered at a venue with fixed seating, and attendance is limited to 20% of seating capacity of the venue.

(c) The limitations to gatherings in sections 2(a) and 2(b) do not apply to:

- (1) Incidental, temporary gatherings of persons in a shared space, such as frequently occur in an airport, bus station, exercise facility, food service establishment, shopping mall, or public pool, except as prohibited in section 3;
 - (2) Gatherings between an employee and a customer for the purpose of receiving services;
 - (3) Workplace gatherings that occur consistent with the Emergency Rules issued by MIOSHA on October 14, 2020;
 - (4) Voting or official election-related activities;
 - (5) Training of law enforcement, correctional, medical, or first responder personnel, insofar as those activities cannot be conducted remotely;
 - (6) Education and support services at public, nonpublic, and boarding schools serving students in prekindergarten through grade 8;
 - (7) Children in a child-care organization, after school program, or camp setting;
 - (8) Persons traveling on a school bus or other public transit;
 - (9) Gatherings for the purpose of medical treatment, including mental health and substance use disorder support services;
 - (10) Gatherings of up to 25 persons for the purpose of a funeral;
 - (11) Residential care facilities, which are subject to the October 21 epidemic order entitled "Requirements for Residential Facilities," or any replacement of that order;
 - (12) Cardiopulmonary resuscitation courses and swimming instruction courses;
 - (13) Proctored, nationally-administered admissions and certification examinations that are not available remotely, provided that examinees are spaced no less than 12 feet apart.
- (d) As a condition of hosting a gathering under this order, organizers and venues must design the gathering to encourage and maintain physical distancing, and must ensure that persons not part of the same household maintain 6 feet of distance from one another to the extent possible.

3. Gathering restrictions for particular types of facilities.

- (a) Gatherings, are prohibited in the following settings:
 - (1) Entertainment venues, including: auditoriums; arenas; banquet halls; cinemas; conference centers; concert halls; performance venues; sporting venues; stadiums; and theaters;
 - (2) Recreational facilities and places of public amusement, including: amusement parks; arcades; bingo halls; bowling alleys; casinos; night clubs; roller rinks; strip clubs; water parks; and trampoline parks;
- (b) Gatherings are permitted at food service establishments under the following conditions:

- (1) Persons are not gathered indoors except in custodial settings, medical facilities, school and university cafeterias, shelters, and soup kitchens. If attendees are seated at tables, persons must be 6 feet apart, or members of a household may share a table and tables must be spaced a minimum of 6 feet apart;
 - (2) Persons participating in outdoor dining are seated no more than 6 to a table and tables are spaced a minimum of 6 feet apart;
 - (c) Nothing in this section shall be construed to prohibit the use of these facilities for public health or other emergency purposes.
4. **Gathering restrictions for facilities.** In addition to the gathering limitations set forth elsewhere in this order, the following limitations apply to gatherings in the following facilities:
 - (a) A gathering at a retail store, library, or museum must not exceed 30% of total occupancy limits established by the State Fire Marshal or a local fire marshal. Nevertheless, a retail store, library, or museum may permit one customer at a time to enter if strict adherence to the 30% total occupancy limit would otherwise result in closure. Spaces for indoor dining, including food courts, must be closed.
 - (1) Retail stores must establish lines to regulate entry and checkout, with markings for patrons to enable them to stand at least six feet apart from one another while waiting.
 - (b) At exercise facilities:
 - (1) Gatherings must not exceed 25% of the total occupancy limits established by the State Fire Marshal or a local fire marshal; and
 - (2) There must be at least 12 feet of distance between each occupied workout station;
 - (3) Gatherings for group fitness activities or classes are prohibited.
 - (c) Gatherings in waiting rooms at outpatient health-care facilities, veterinary clinics, and other businesses are prohibited unless the facility implements a system to ensure that persons not of the same household maintain 6 feet of distance. To the extent possible, this system must include a policy that patients wait in their cars for their appointments to be called.
 - (d) Gatherings at an indoor or outdoor pool not otherwise prohibited by this order must not exceed 25% of bather capacity limits described in Rule 325.2193 of the Michigan Administrative Code.
 - (e) Gatherings at indoor and outdoor ice skating rinks are prohibited, except for individual exercise or one-on-one instruction, and occupancy is limited to 20 persons per 1,000 square feet, including within the exercise space. Gatherings for the purpose of open skating are permitted only at outdoor rinks.
 - (f) In facilities offering non-essential personal care services, including hair, nail, tanning, massage, traditional spa, tattoo, body art, and piercing services, and similar personal care services, gatherings are only permitted to the extent that services do not involve the removal of face masks. All services must be provided by appointment, and gatherings in waiting areas are prohibited.
5. **Schools, colleges, technical schools, and universities.**

- (a) Gatherings at public and nonpublic schools for the purpose of conducting in-person instruction, sports, and extracurricular activities serving pupils in grades 9 through 12 are prohibited, except for in-person instruction of pupils who are English Language Learners or participants in special education services, or as provided in sections 5(d), and 5(g);
- (b) Gatherings at public and nonpublic schools for the purpose of conducting in-person instruction of pupils in prekindergarten through grade 8 are permitted, subject to local health department and school district decisions on remote learning. Gatherings for the purpose of sports and extracurricular activity are prohibited;
- (c) Gatherings at public and nonpublic school are permitted for the purpose of child care programs, tutoring and academic support, and for providing services to students in need, including food distribution, access to internet connectivity, physical and mental health care services;
- (d) Gatherings at closed-campus boarding schools for the purpose of conducting in-person instruction are permitted, subject to local health department and school district decisions on remote learning.
- (e) Gatherings at colleges and universities, trade schools, and career schools, are prohibited for the purpose of holding in-person classes, extracurricular events, or other events, except as permitted in sections 2, 5(f), 5(g), and 6 of this order.
- (f) Gatherings at trade schools and career schools are permitted for the purpose of providing technical education services, including manufacturing, industrial technology, trades, and cosmetology, but only to the extent that these activities cannot be completed remotely.
- (g) Gatherings at public and nonpublic schools for the purpose of delivering career and technical education services to pupils in grades 9 through 12 are permitted, but only to the extent that these activities are necessary to complete requirements for a recognized postsecondary credential and only to the extent that these activities cannot be completed remotely.

6. Organized sports gathering restrictions.

- (a) Gatherings for the purpose of organized sports are prohibited unless all participants, teams, and venues comply with the enhanced testing regimen specified in the Additional Mitigation Measures for Safer Athletic Practice and Play without the use of Face Coverings section of [MDHHS guidance on Additional Measures for Safer Athletic Practice and Play](#). Sports organizers complying with this section may host gatherings for the purpose of practice and competition notwithstanding the gathering prohibitions in sections 2 and 5(e).
- (b) Sports organizers may not permit gatherings of spectators.

7. Face mask requirement at gatherings.

- (a) All persons participating in gatherings are required to wear a face mask.
- (b) As a condition of gathering for the purpose of transportation, transportation providers must require all staff and patrons to use face masks, and must enforce physical distancing among all patrons to the extent feasible.
- (c) Except as provided elsewhere in this order, a person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, must prohibit gatherings of any kind unless the person requires individuals in such

gatherings (including employees) to wear a face mask, and denies entry or service to all persons refusing to wear face masks while gathered.

- (d) A person responsible for a business, store, office, government office, school, organized event, or other operation, or an agent of such person, may not assume that someone who enters the facility without a face mask falls within one of the exceptions specified in section 8 of this order, including the exception for individuals who cannot medically tolerate a face mask. An individual's verbal representation that they are not wearing a face mask because they fall within a specified exception, however, may be accepted.
- (e) A person responsible for a child-care organization or camp, or an agent of such person, must not allow gatherings unless face masks are worn by all staff. Children must wear face masks as indicated below:
 - (1) All children 2 years and older when on a school bus or other transportation provided by the child-care organization or camp;
 - (2) All children 4 years and older when in indoor hallways and indoor common areas;
 - (3) All children 5 years and older when in classrooms, homes, cabins, or similar indoor settings.

8. **Exceptions to face mask requirements.** Although a face mask is strongly encouraged even for individuals not required to wear one (except for children under the age of 2), the requirement to wear a face mask in gatherings as required by this order does not apply to individuals who:

- (a) Are younger than 5 years old, outside of child-care organization setting (which are subject to requirements set out in section 7(e));
- (b) Cannot medically tolerate a face mask;
- (c) Are eating or drinking while seated at a food service establishment or at a private residence;
- (d) Are exercising outdoors and able to consistently maintain 6 feet of distance from others;
- (e) Are swimming;
- (f) Are receiving a medical service for which removal of the face mask is necessary;
- (g) Are asked to temporarily remove a face mask for identification purposes;
- (h) Are communicating with someone who is deaf, deafblind, or hard of hearing and whose ability to see the mouth is essential to communication;
- (i) Are actively engaged in a public safety role, including but not limited to law enforcement, firefighters, or emergency medical personnel, and where wearing a face mask would seriously interfere in the performance of their public safety responsibilities;
- (j) Are at a polling place for purposes of voting in an election;
- (k) Are engaging in a religious service; or
- (l) Are giving a speech for broadcast or to an audience, provided that the audience is at least 6 feet away from the speaker.

9. Contact tracing requirements for particular gatherings.

- (a) Gatherings are prohibited at the following facilities unless the facility maintains accurate records, including date and time of entry, names of patrons, and contact information, to aid with contact tracing, and denies entry for a gathering to any visitor who does not provide, at a minimum, their name and phone number:
 - (1) All businesses or operations that provide barbering, cosmetology services, body art services (including tattooing and body piercing), tanning services, massage services, or similar personal care services;
 - (2) Exercise facilities.
- (b) All businesses or operations that provide in-home services, including cleaners, repair persons, painters, and the like must not permit their employees to gather with clients unless the business maintains accurate appointment records, including date and time of service, name of client, and contact information, to aid with contact tracing.
- (c) Upon request, businesses, schools, and other facilities must provide names and phone numbers of individuals with possible COVID-19 exposure to MDHHS and local health departments to aid in contact tracing and case investigation efforts.
- (d) Data collected under this section:
 - (1) Must not be sold, or used for sales or marketing purposes without the express consent of each patron;
 - (2) Must be protected as confidential information to the fullest extent of the law;
 - (3) Must not be provided to law enforcement or immigration officials except upon receipt of a lawful subpoena from a court or other lawful court order;
 - (4) Must be retained for 28 days by the collecting organization, after which time the data must be destroyed. If facilities use existing data to fulfill this requirement, they may instead follow their own pre-existing data retention and destruction policies at the conclusion of the 28-day retention period.

10. Implementation.

- (a) Nothing in this order modifies, limits, or abridges protections provided by state or federal law for a person with a disability.
- (b) Under MCL 333.2235(1), local health departments are authorized to carry out and enforce the terms of this order.
- (c) Law enforcement officers, as defined in the Michigan Commission on Law Enforcement Standards Act, 1965 Public Act 203, MCL 28.602(f), are deemed to be “department representatives” for purposes of enforcing this order, and are specifically authorized to investigate potential violations of this order. They may coordinate as necessary with the appropriate regulatory entity and enforce this order within their jurisdiction.
- (d) Neither a place of religious worship nor its owner is subject to penalty under this order for allowing religious worship at such place. No individual is subject to penalty under this order for engaging in religious worship at a place of religious worship.

- (e) Consistent with MCL 333.2261, violation of this order is a misdemeanor punishable by imprisonment for not more than 6 months, or a fine of not more than \$200.00, or both.
- (f) Nothing in this order affects any prosecution or civil citation based on conduct that occurred before the effective date of this order.
- (g) Nothing in this order should be taken to interfere with or infringe on the powers of the legislative and judicial branches to perform their constitutional duties or exercise their authority, or protections guaranteed by the state or federal constitution under these emergency circumstances.
- (h) Consistent with any rule or emergency rule promulgated and adopted in a schedule of monetary civil penalties under MCL 333.2262(1) and applicable to this order, violations of this order are also punishable by a civil fine of up to \$1,000 for each violation or day that a violation continues.
- (i) If any provision of this order is found invalid by a court of competent jurisdiction, whether in whole or in part, such decision will not affect the validity of the remaining part of this order.
- (j) It is not a violation of this order for a person to enter a facility otherwise closed for gatherings if they are entering solely for the purpose of using restroom facilities.

This order takes effect on December 9, 2020 at 12:01 AM, at which time the November 18, 2020, order entitled Gatherings and Face Mask Order is rescinded. This order remains in effect through December 20, 2020 at 11:59 PM. Persons with suggestions and concerns are invited to submit their comments via email to COVID19@michigan.gov.

Date:

December 7, 2020



Robert Gordon, Director

Michigan Department of Health and Human Services

EXHIBIT 10

5 Things You Need to Know About Student Absences During COVID-19

By Mark Lieberman on October 16, 2020 3:57 PM

Share 35

Absenteeism has long been a vexing and frustrating issue for educators. During COVID-19, the phenomenon has only grown more pressing.

Education Week conducted a **nationally representative survey of 790 K-12 educators** from Sept. 30 to Oct. 8 on several topics, including issues related to absences. The findings reflect major challenges for schools as well as opportunities to tackle urgent learning gaps that threaten to persist without swift intervention.

Here's what we learned from the survey findings. (Check out Education Week's How We Go Back to School series for guides on related topics such as **overcome learning loss** and **addressing widening equity gaps**.)

1. Student absences have doubled during the pandemic.

Perhaps not surprisingly, COVID-19 has led to an increase in the number of students who are absent on a typical school day. Educators who responded to this month's survey reported an average of 5 percent of their students were absent on a typical day before the pandemic. Currently, that average has increased to 10 percent. That means double the number of students are absent on a typical day compared with normal circumstances.

Before the pandemic, daily absenteeism rates were roughly equal among elementary, middle, and high school students. Now, though, the numbers suggest high schoolers are slightly more likely to be absent (13 percent on a typical day) than middle (11 percent) or elementary schoolers (9 percent).

2. Absences are up for students in full-time in-person instruction too.

The bulk of news coverage around **student absenteeism this spring** centered around the challenges of reaching students remotely. Some students were missing because they lacked reliable internet connections or a digital device at home, while for others the pandemic led to new work or child care responsibilities for students and their families that made attending school a lower priority than usual. Taking attendance is **also more challenging** in remote learning environments.

Now that some students have returned to school buildings while others remain at home, it's possible to examine whether the constraints of remote learning are among the primary factors that kept thousands of students from attending school this fall.

The verdict? According to the survey, absenteeism rates are higher for schools and districts that have stuck with full-time remote learning, but they're also up in schools doing full-time in-person instruction or a mix of remote and in-person learning. In fact, absenteeism rates appear to have nearly doubled between this fall and before the pandemic across the board, regardless of whether remote learning is in place or not.

3. Schools should tread carefully on holding students accountable for unexcused absences.

Presented with a list of actions schools might take if a student has had unexcused absences this school year, more than three-quarters of educators who answered the EdWeek survey said a teacher reaches out to find out what's going on with the student or attempts to get in touch with the student's parents. One-fifth of educators said unexcused absences prompt the school to visit a student's home in an attempt to locate them.

The results are more diffuse when it comes to disciplinary actions. Only 29 percent of respondents said students might get a lower grade or lose participation points if they have unexcused absence. An even smaller group, 25 percent, said truancy officers get notified of a student's unexcused absences. Twelve percent said students might be retained in their current grade level if unexcused absences pile up.

4. Approaches to absenteeism differ depending on a school's location and socioeconomic makeup.

Educators in suburban schools are more likely (26 percent) to dock points from a student's grade in response to unexcused absences than educators in urban schools (15 percent). Urban schools are more likely (55 percent) than educators in suburban schools (42 percent) or rural schools (34 percent) to connect absent students' families with social workers or digital devices to help address the root causes of absenteeism.

Schools where more than half of students are enrolled in free and reduced lunch programs are more likely (17 percent) to hold students back in response to unexcused absences than schools where fewer than half meet that household income threshold (7 percent).

5. Very few students face suspension, expulsion, or legal consequences for unexcused absences

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very few students face suspension, expulsion, or legal consequences for unexcused absences.

Only 6 percent of educators said their schools would suspend or expel students for unexcused absences, and only 5 percent said students would face legal consequences for unexcused absences.

Still, that means some students could be subjected to harsh penalties for failing to attend school regularly, whether by not arriving at the school building or not logging into a video livestream. In one high-profile case this spring, a 15-year-old girl in Michigan **went to jail for 78 days** after a judge ruled her failure to complete online schoolwork represented a violation of her probation.

Some states, like Washington, have advised schools that attendance data should "not be used in a punitive manner," but rather to inform schools about students missing opportunities to learn. The nonprofit Attendance Works recommends **using attendance data** to "partner with families to develop plans reflecting a student's situation," including health, academics, and relationships.

Categories: [Student Well-being](#) [equity](#)

Tags: [absenteeism](#) [attendance](#) [covid-19](#)

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EXHIBIT 11

Talent & Education

Report: Michigan's most vulnerable students have limited learning options during the pandemic



Between one-third and one-half of Michigan students were learning completely online at the start of November, 2020.
Patrick Wall/Chalkbeat



November 20, 2020



Koby Levin, Chalkbeat

The students who need in-person instruction the most are among the least likely to get it, new Michigan data shows.

Education leaders in the state have insisted since the beginning of the pandemic that virtual instruction simply can't meet the needs of thousands of students — notably young readers, English learners, students with special needs, and students from low-income families who may not have the resources required to learn from home.

But this fall, as the pandemic raged, many of those students didn't have the option to learn in person. Students from low-income families were seven times less likely to have an in-person schooling option than their wealthier peers, and Black students faced a similar disparity. Only half of districts reported opening their classrooms to children with special needs.

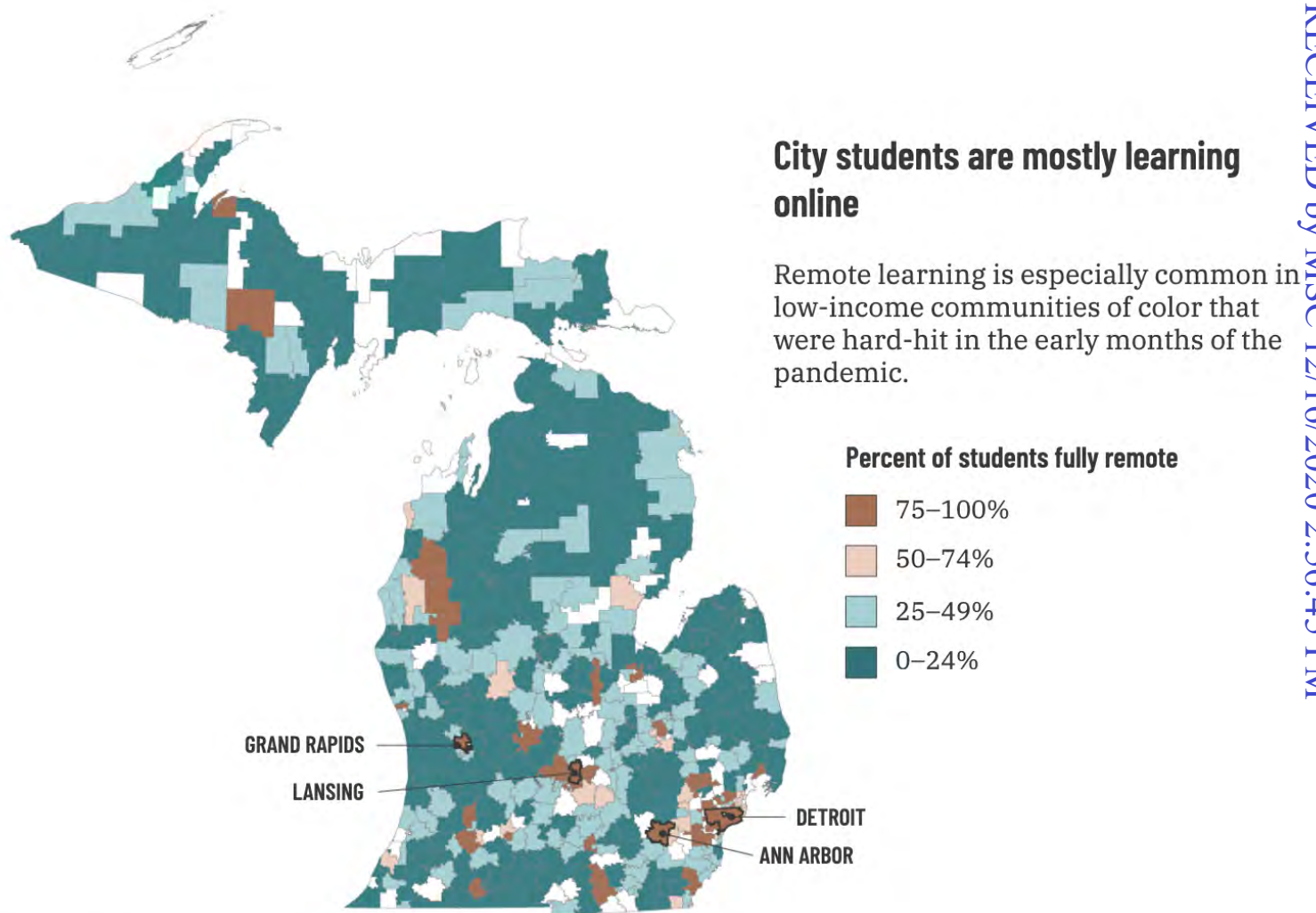
"These numbers devastate me," said Katharine Strunk, a professor at Michigan State University who helped collect and [analyze the data](#). "Even if parents don't choose the option to be in person, it's hard for me to explain why we think it's okay to give wealthier and whiter families the choice to be in person and not give less wealthy and Black students" that choice.

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Source: Education Policy Innovation Collaborative, Michigan State University
Credit: Gabrielle LaMarr LeMee, Chalkbeat

Educators generally agree that in-person instruction is ideal for most students under normal circumstances. Eight months into the pandemic, survey data [suggests](#) that online instruction remains a major challenge for families, even though many say it has gone better this fall than in the spring. In Michigan, districts estimated that students received live instruction from a teacher less than half the time they were online.

The [new data](#), which was self-reported by districts in recent weeks and released Thursday, offers the clearest picture to date of districts' approaches to pandemic education. The numbers were published by the Michigan Department of Education in partnership with researchers at Michigan State.

The data is not fully up-to-date. New COVID-19 cases have reached record highs in Michigan and nationwide since the last data was collected from districts on November 11. Since then, Gov. Gretchen Whitmer ordered all high schools and colleges to stop in-person instruction.

Strunk cautioned that self-reported data is prone to errors. What's more, out of 833 districts and charter schools, 70 didn't submit data for November, and over two dozen didn't submit data for September and October.

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Still, the numbers offer an unparalleled glimpse of students' experience during the pandemic — and point to grave inequities in Michigan's approach to the pandemic.

"We're going to have kids receiving a lower quality education this year, and they were already disadvantaged by the system," Strunk said. "How are we going to make this up next year?"

Here are a few key takeaways from the data:

The pandemic is hurting the most vulnerable at school, too

In the early days of the pandemic in Michigan, cities were especially hard-hit.

While the coronavirus has now spread to every corner of the state, students in urban areas are still far less likely to be learning in-person than their peers across the state. These students tend to be people of color who come from low-income families, exacerbating educational inequities that were entrenched in Michigan even before the pandemic.

The politicization of the public health crisis has likely fueled the divide — national studies have [suggested](#) that a region's political affiliation is linked to school reopening decisions.

Fear of the coronavirus also reduced the number of students learning in person, even when they had that option. In Detroit, where more than 1,500 people have died of the virus, the vast majority of parents who had the choice to send their child to a classroom chose to stick with remote learning.

Even when parents have the option to send their children to school in person, many choose online instru

Across the state, roughly 15% of students attended a district that was only offering virtual learning in November.

Yet the proportion of students who were actually learning online was between 33% and 50%.

Few districts are offering additional in-person services to students who need them most

Stephanie Onyx's two children normally [receive full-time help at school](#). Both have multiple severe special needs, and their schools in Troy provide numerous therapies to help them develop, some of which can only be done in person.

When Troy closed its classrooms this fall, Onyx, a single parent, was left to meet all of her children's needs by herself.

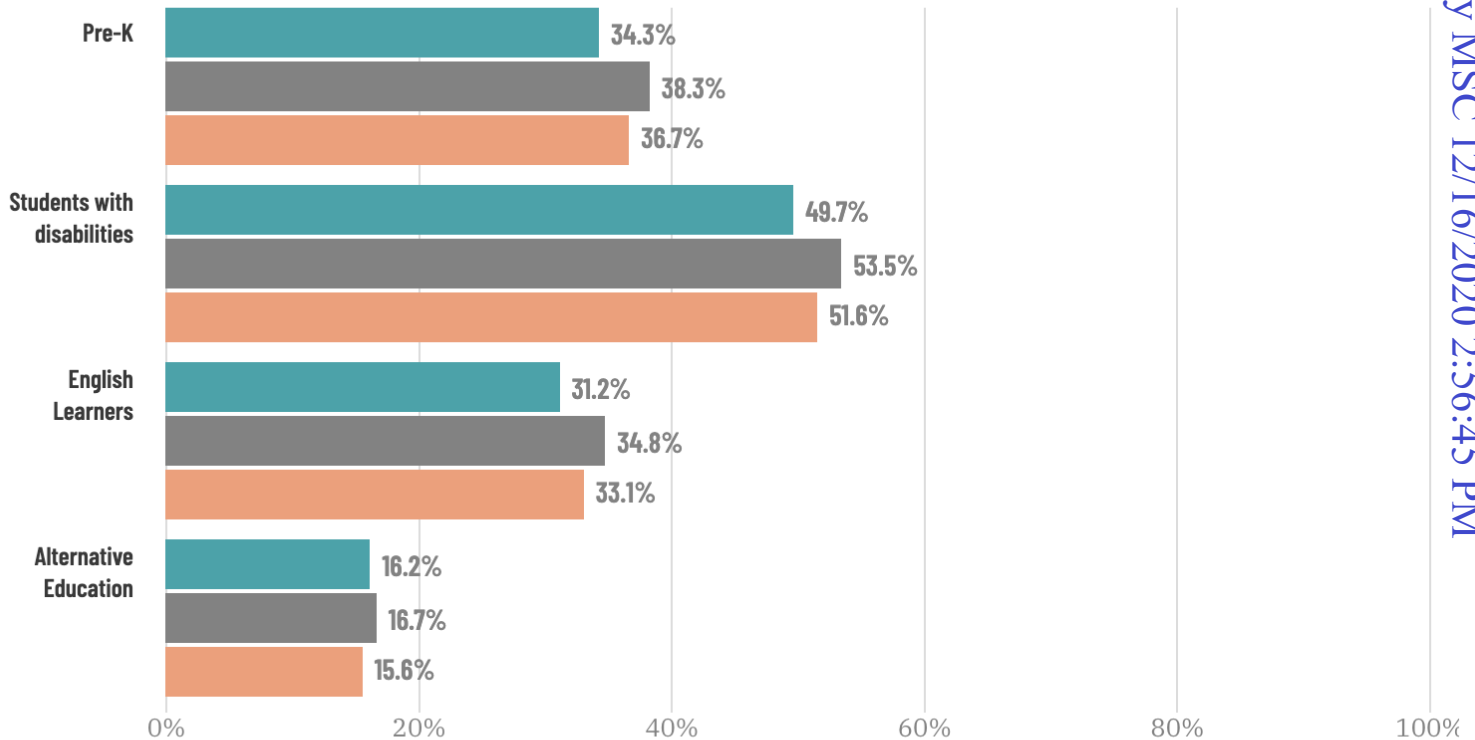
Just half of schools in Michigan have provided an in-person option to families like this, whose special needs make in-person learning especially important.

Even fewer are providing an in-person option to English learners or prekindergarten students.

In-person learning often isn't available to the students who need it most

Most students with special needs didn't have access to in-person instruction. For instance, only 51% of districts said their classrooms were open to students with disabilities.

■ September ■ October ■ November



Source: Education Policy Innovation Collaborative, Michigan State University

Credit: Sam Park, Chalkbeat

Younger students aren't getting the extra attention they need

The pandemic has been especially hard on families with young children, who tend to have trouble working independently and sitting in front of screens. Experts agree that the early years of education, when students learn fundamental skills such as reading, are especially important.

Yet across Michigan, younger students haven't been given more opportunities for in-person learning.

Younger students also didn't get much additional live instruction — when they are interacting with their teacher in real time, typically by videoconference — compared with their older peers.

Kindergartners learning online received live instruction between 32% and 50% of the time. The proportion of live instruction was almost identical for high school seniors — between 30% and 48%.

Majority Black and low-income districts are less likely to offer in-person learning

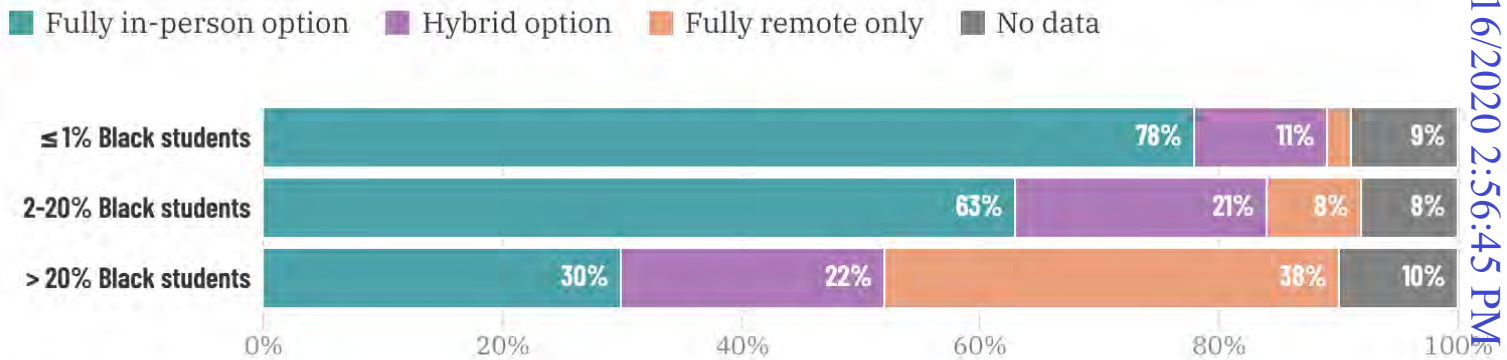
Districts with a high proportion of Black students were far less likely to offer in-person instruction.

Remote instruction was the only option in November at 38% of districts which enrolled 20% Black students or more. (African-Americans make up 18% of all Michigan students.)

By contrast, 78% of districts with almost no Black students planned to offer in-person learning in November

Black students are far less likely to have an in-person option

Virtual-only instruction is most commonly offered by districts with high proportions of Black students.



Source: Education Policy Innovation Collaborative, Michigan State University

Credit: Gabrielle LaMarr LeMee, Chalkbeat

Related Articles:

Michigan to close high schools, colleges, bars for 3 weeks as COVID spikes

November 15, 2020 | [Jonathan Oosting](#), [Robin Erb](#), [Ron French](#)

A surge in the coronavirus in Michigan means another round of restrictions, including efforts to limit family gatherings for Thanksgiving.



With teachers out from COVID, Michigan schools can't keep classes open

November 13, 2020 | [Ron French](#)

With coronavirus cases surging across Michigan, schools are facing not only a health crisis, but a staffing crisis: There aren't enough substitute teachers to replace classroom teachers who are infected or quarantined.



Thousands fled Michigan schools in fall. Will COVID home-schoolers come back?

November 18, 2020 | [Ron French](#)

Michigan schools are uncertain how many students who've fled public schools during the pandemic will return when there is a vaccine.

EXHIBIT 12

The Disparities in Remote Learning Under Coronavirus (in Charts)

By Benjamin Herold

April 10, 2020

The messy transition to remote learning in America's K-12 education system as a result of the COVID-19 pandemic has been marked by glaring disparities among schools, according to nationally representative surveys of U.S. teachers and school district leaders administered by the EdWeek Research Center.



Among the most significant are gaps between the country's poorest and wealthiest schools around access to basic technology and live remote instruction, as well as the percentages of students who teachers report are not logging in or making contact.

Following are nine key findings from two surveys, completed online by a total of more than 2,600 teachers and school district leaders. The first survey was administered on March 24 and 25. The second was administered on April 7 and 8.

The big takeaway, according to experts who reviewed the data at Education Week's request?

As it's done with the country's health care system, economy, and social safety net, the pandemic is exposing and exacerbating the deep inequities that have long shaped American public education.

"There's so much loss and distress that is being concentrated in communities that need quality schooling the most," said Janelle Scott, an education and African-American studies professor at the University of California, Berkeley. "I think there's a need to pull back and think about what [public education] means in relation to the magnitude of this moment."

1. Big Gaps in Basic Technology Access

distributing schoolwork. Teachers in the districts with the highest percentage of students from low-income families were about equally likely to report collecting and returning work online and having families pick up work packets in person. In districts with the lowest percentage of students from low-income families, on the other hand, 69 percent of teachers said they distributed work online, while just 14 percent said they did so in person.

Similarly, teachers in rural districts were far more likely than their urban and suburban counterparts to say they've provided student work in person. Often, this takes the form of work packets bundled with meals that are available for pickup at schools or delivered by school buses.

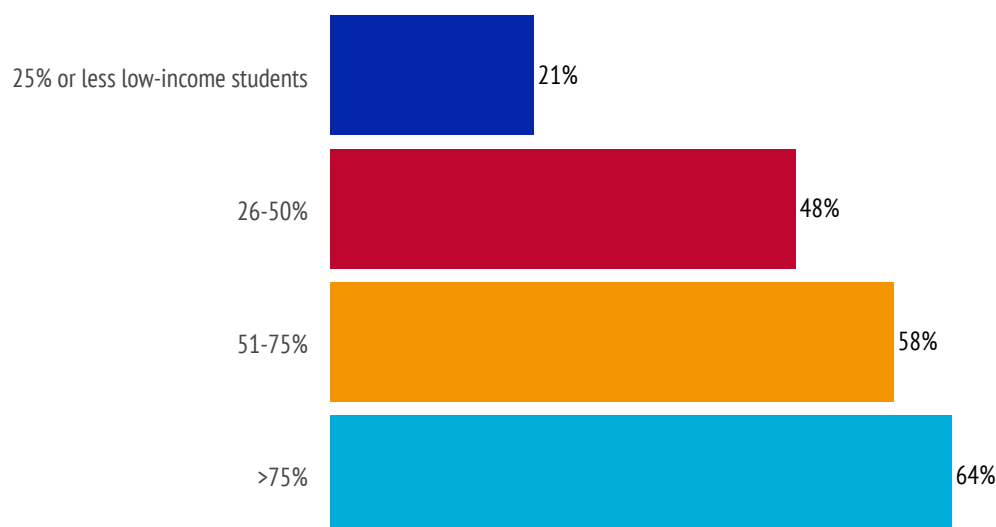
Tech-access issues almost certainly play a role, as do worries in denser communities about facilitating the spread of the virus by creating spaces where many people are gathering together. But in rural communities, where the population is sparse and the distances between home and school are often great, the dynamics of in-person pickup or delivery of schoolwork create one more hurdle resulting from a pandemic that has totally upended American life—especially in places already struggling to get by.

"This is definitely highlighting the gaps we already have," said Pratt, the National Rural Education Association Director.

Vol. 39, Issue 30, Pages 12-13

Published in Print: April 29, 2020, as **The Disparities In Remote Learning Under Coronavirus**

Percentage of districts leaders who said students' lack of technology access is a major challenge to teaching during Coronavirus-related closures (March 24 & 25)



SOURCE: EdWeek Research Center

EducationWeek

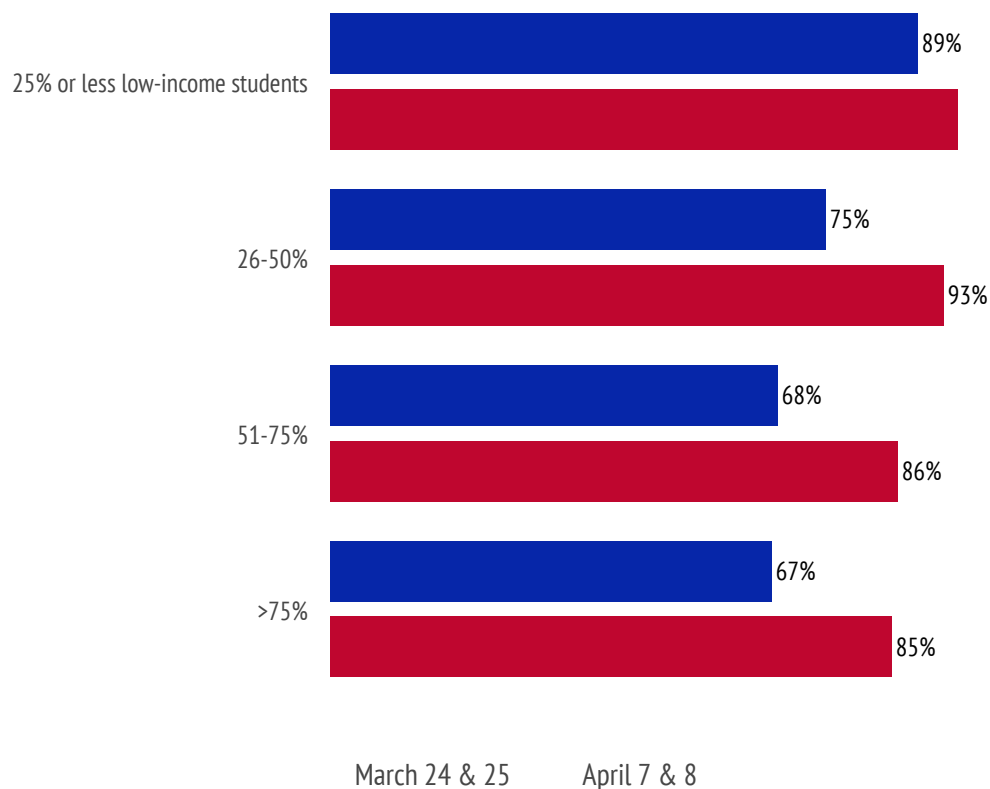
Two of the biggest hurdles to moving America's schools online have been an inadequate number of digital devices for students and millions of families' lack of high-speed internet at home. These gaps in basic technology access are particularly stark along socioeconomic lines: In districts with the lowest percentages of students from low-income families, just 1 in 5 leaders reported in late March that a lack of basic technology is a "major" problem, compared with nearly two-thirds of leaders in districts where the highest percentages of students are from low-income families.

The resulting scramble led to often-messy efforts to distribute schools' existing stockpiles of classroom laptops and tablets and created a supply backlog that continues to hamper schools' ability to order new devices, especially Chromebooks. And while numerous districts have partnered with internet service providers to expand access to free or low-cost connections, advocates have called on government to make a more systematic effort to close the digital divide.

"It's not the time to be timid," said FCC Commissioner Jessica Rosenworcel, a long-time proponent of more aggressive federal efforts to eliminate disparities in access to high-speed internet, in a March 31 statement. "We have the authority right now to extend the reach of broadband and close the 'Homework Gap' so we connect millions of children who desperately need to get online for school."

2. Reducing Early Disparities in Whether Teachers Were Teaching

Percentage of teachers who said they were engaging in instruction while their school is closed due to the Coronavirus (March 24 & 25 vs. April 7 & 8)



SOURCE: EdWeek Research Center

EducationWeek

In the first weeks of coronavirus-related school closures, the EdWeek Research Center also found that the percentage of teachers in America's lowest-income schools who said they were engaging in instruction was 22 points lower than the percentage of teachers in the highest-income schools.

All told, 74 percent of teachers who completed the survey on March 24 or 25 said they were still teaching. But that figure rose to 89 percent in public schools where one-fourth or fewer of students are from low-income families, and it dropped to 67 percent in schools where more than three-fourths of students are from low-income families.

Some of that discrepancy may have been the result of the disparities in technology access. Many districts also adopted multi-stage remote-learning plans, including initial shutdowns over extended Spring Break

periods that allowed for time to plan before instruction began. Still others intentionally held off on any remote instruction due to equity concerns.

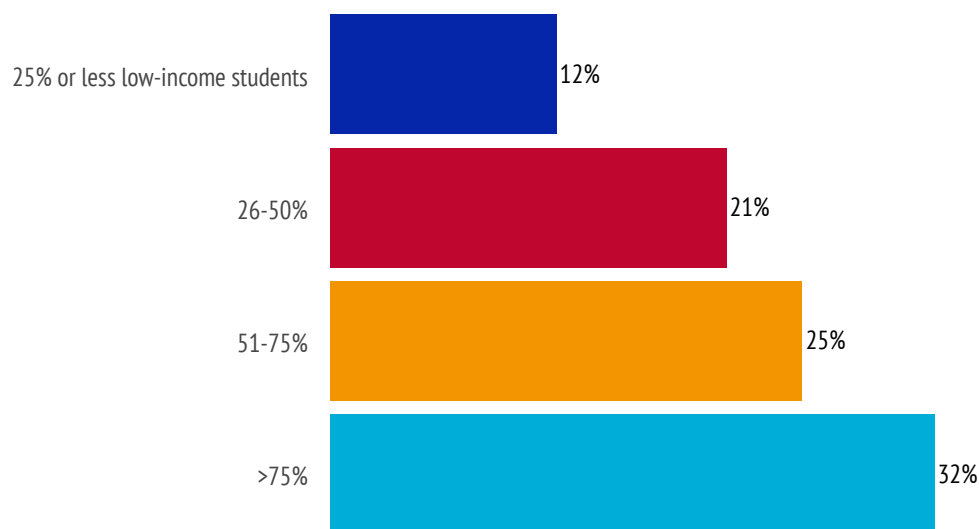
By early April, the gap had narrowed considerably, to 10 percentage points, with 85 percent of teachers in the country's lowest-income schools saying they were engaged in instruction.

Moving forward, said Scott, the University of California, Berkeley professor, it's critical to monitor the extent to which the coronavirus is making existing inequities more acute.

"It's the same story we've long known in K-12 schools," she said. "Districts with more resources are likely going to be able to avail themselves of higher quality instruction, and higher-income families are going to be much better positioned to support [remote] learning than less-resourced families who don't have the privilege of staying at home."

3. Significant "Truancy" in Lower-Income Schools

Percentage of teachers who said their students were essentially
"truant" during Coronavirus-related closures (April 7 & 8)



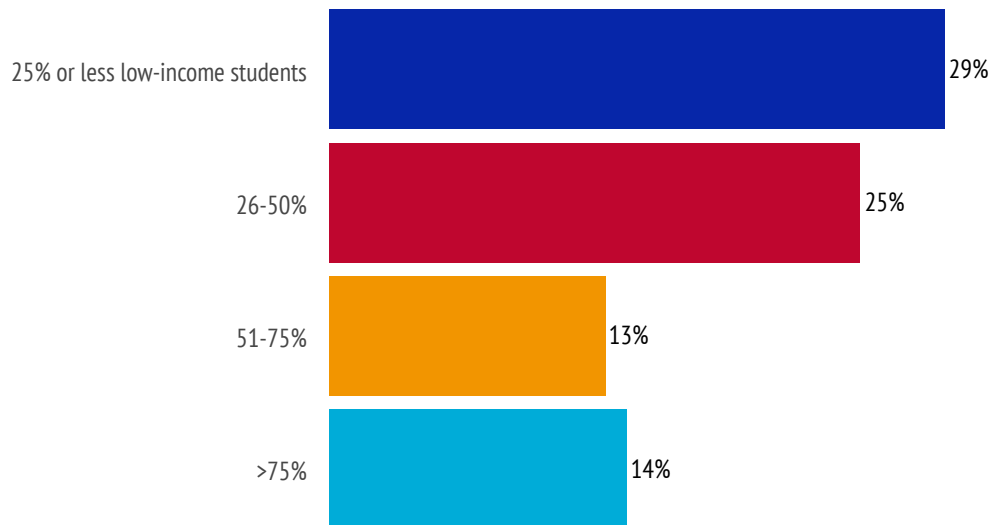
SOURCE: EdWeek Research Center

EducationWeek

One big cause for potential alarm: Teachers in the highest-poverty schools report that nearly a third of their students are not logging in or otherwise making contact. That figure is almost three times higher than the percentage of truant students reported by teachers in schools with the lowest number of students from families living in poverty.

4. Higher Poverty Schools Less Likely to Offer Live Instruction

Percentage of district leaders who said their district was offering live classes in which students interact with each other and with teachers during Coronavirus-related closures (March 24 & 25)



SOURCE: EdWeek Research Center

EducationWeek

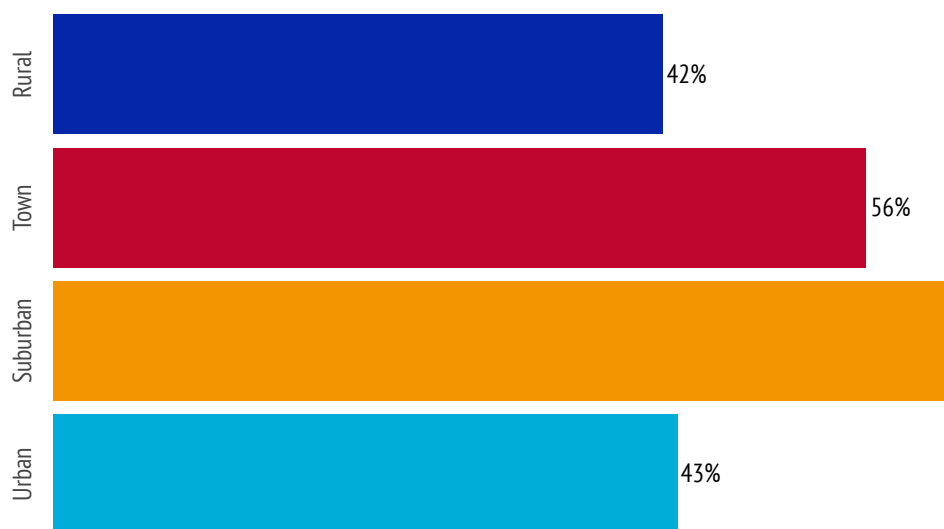
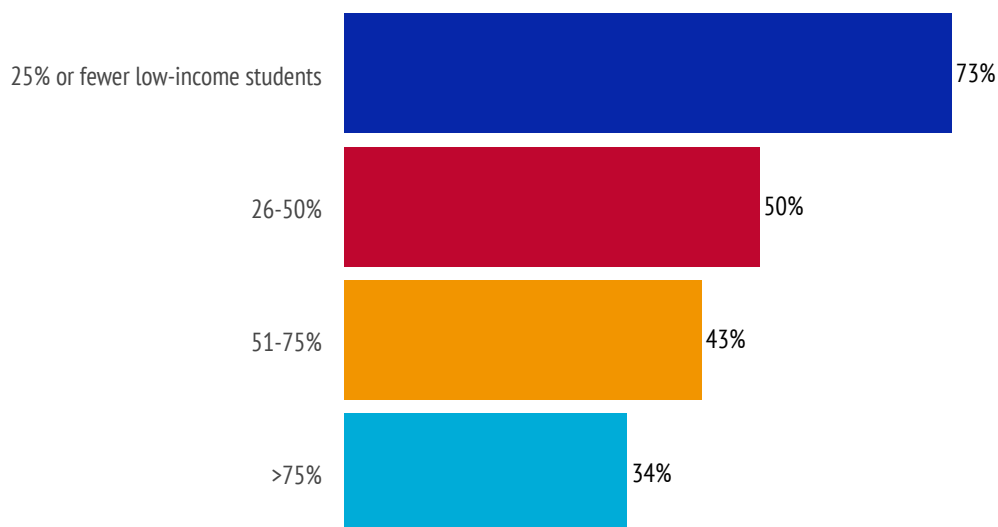
Disparities in the type of instruction available to students are also evident.

So-called synchronous instruction, which takes place live and allows for real-time interaction, is not inherently better than asynchronous instruction. Indeed, there are often advantages to letting students access and digest material on their own time, at their own pace—especially in the midst of a pandemic, where the logistics of getting through a day can be difficult, and multiple people in a home might be sharing a single device.

But for many children, under many circumstances, the chance to talk with a teacher and see friends and receive personal support for social-emotional concerns remains fundamental to what school is all about. And the results from the EdWeek Research Center survey again found big disparities here, with leaders of districts serving the lowest percentages of students from low-income families being more than twice as likely to say they provided fully synchronous instruction than leaders of districts serving the highest percentages of students from low-income families.

5 & 6: Rural, Urban, and High-Poverty Districts Far Less Able to Reach All Students

Percentage of district leaders who said they were able to provide online learning opportunities to all students during Coronavirus-related closures (March 24 & 25)



SOURCE: EdWeek Research Center

Whatever type of online instruction schools and districts are attempting during their coronavirus-related closures, the biggest challenge has been doing it equally for all students. Federal and state governments have struggled to provide consistent guidance on the subject, largely because the underlying issues and tradeoffs involved are so thorny and difficult.

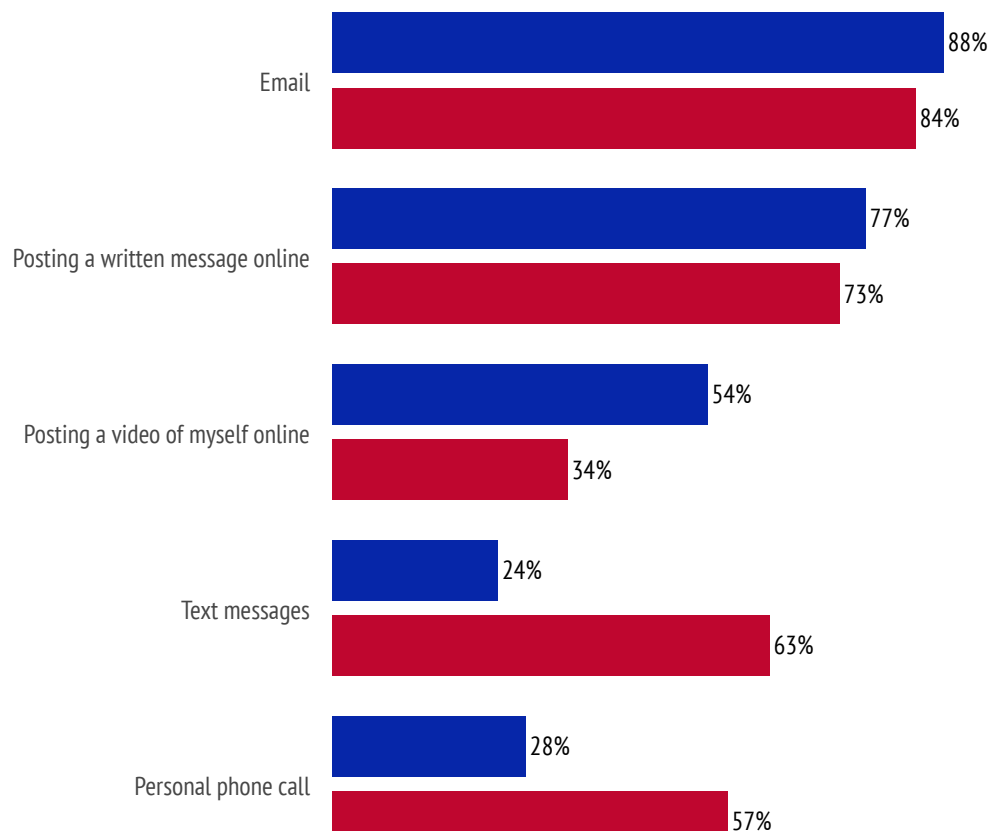
Some leaders said their districts are navigating the challenge better than others—likely because they have a stronger technology infrastructure and narrower range of needs and circumstances to accommodate. Sixty-two percent of leaders from suburban districts and 73 percent of leaders from districts with the lowest percentages of low-income students said they're able to provide online learning opportunities to all students.

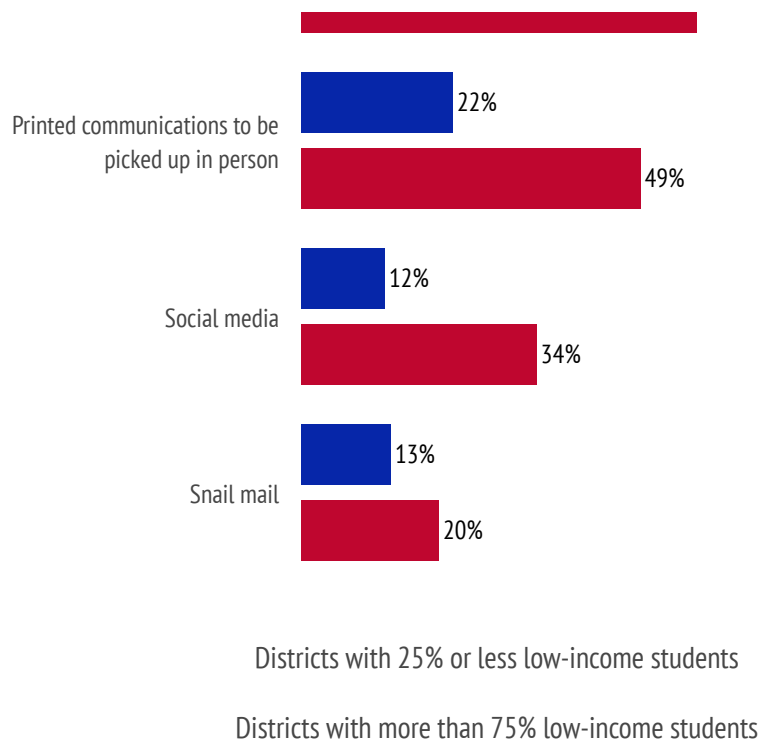
At the other end of the spectrum sit rural and high-poverty districts, where well under half of leaders say they're able to provide online learning opportunities for all students. Rural schools in particular face a triple challenge of poor connectivity, limited staff and technical expertise, and lack of political clout, leaving them to stitch together patchwork solutions when the coronavirus pandemic hit.

"This sheds a light on the fact that some rural districts didn't have the infrastructure set up beforehand to make [online learning] happen," said Allen Pratt, the executive director of the National Rural Education Association.

7. More Lower-Income Schools Using Wider Range of Communications Tools

Percentage of teachers who said they used the following methods to interact with students since schools closed due to Coronavirus (April 7 & 8)





SOURCE: EdWeek Research Center



On the flip side, teachers in America’s lowest-income school districts—including many in rural areas—appear to have been more creative than their counterparts in more affluent districts at finding multiple ways to reach students.

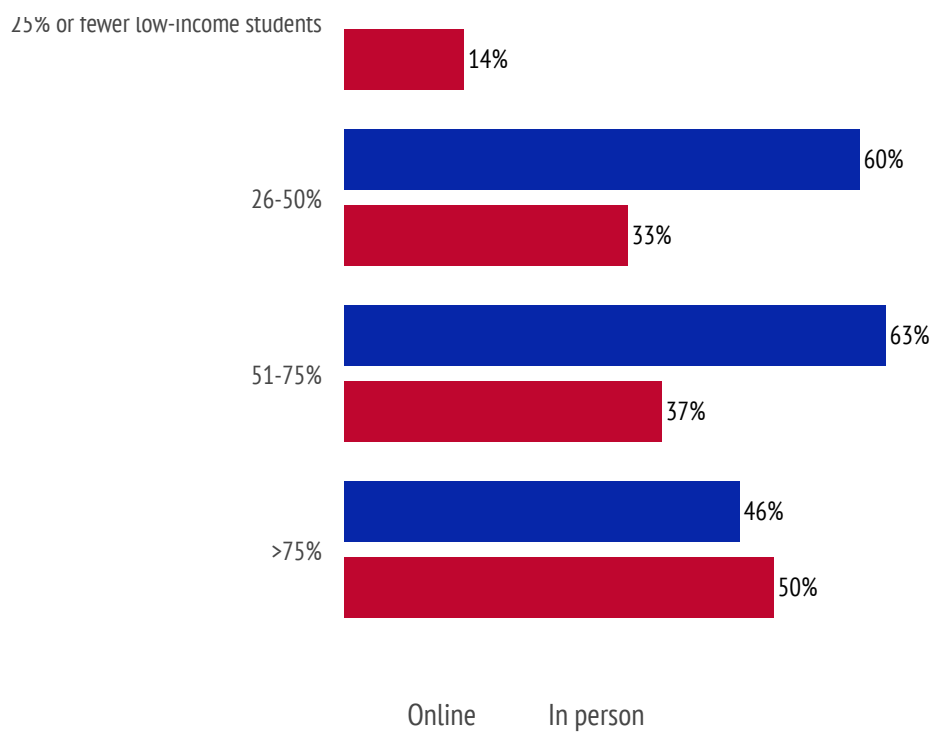
The vast majority of all schools are using email, and teachers in wealthier districts were more likely to post messages and videos online, the EdWeek Research Center found in early April.

But teachers in the lowest-income schools were more than twice as likely as teachers in those schools to use text messages, phone calls, social media, and printed communications to reach students, and they were also far more likely to send material out via snail mail.

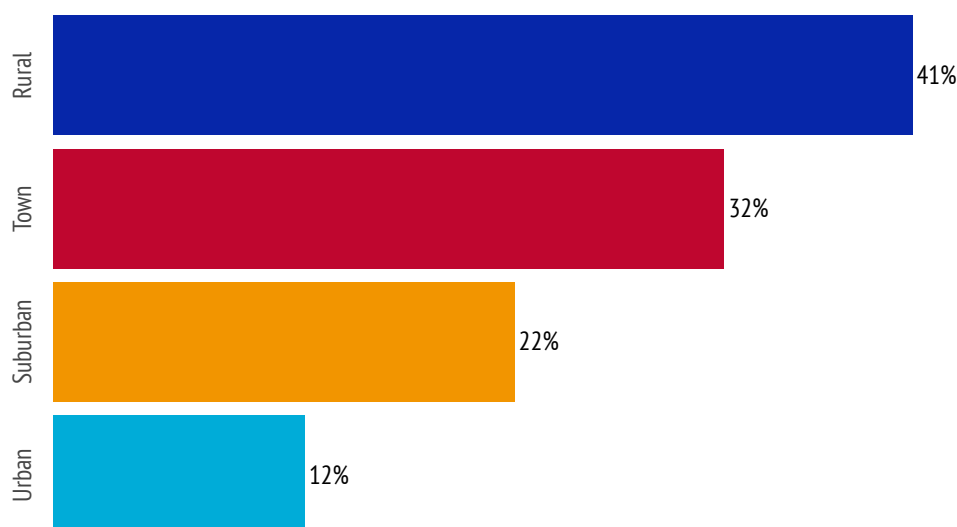
8 & 9: Big Differences in Distributing Schoolwork Online vs. In-Person

Percentage of teachers who said they were collecting and returning students work online vs. having families pick up work packets in person (March 24 & 25)





Percentage of teachers who have had families pick up work packets in person:



SOURCE: EdWeek Research Center

EducationWeek

Just as the EdWeek Research Center survey showed sharp disparities in access to technology access and live instruction, it also revealed big differences in how high- and low-income districts approached

EXHIBIT 13

Schools

Detroit Superintendent Wants More Face-To-Face Learning To Encourage Attendance

Enrollment in the Detroit school district is down by 3,000 students compared with this time last year.

By Chalkbeat Detroit, News Partner

Oct 20, 2020 7:50 am ET

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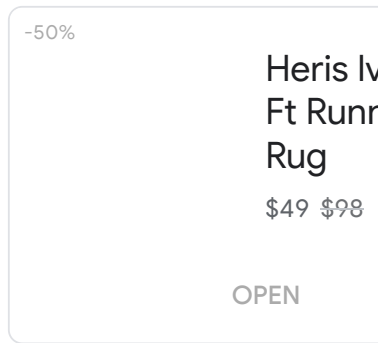
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The Chalkbeat logo features the word "Chalkbeat" in a large, bold, black sans-serif font. It is enclosed within a rectangular border that has a thick, textured, teal-colored stroke, resembling chalk or paint.

(Chalkbeat)

[By Eleanore Catolico,, From Chalkbeat Detroit:](#)

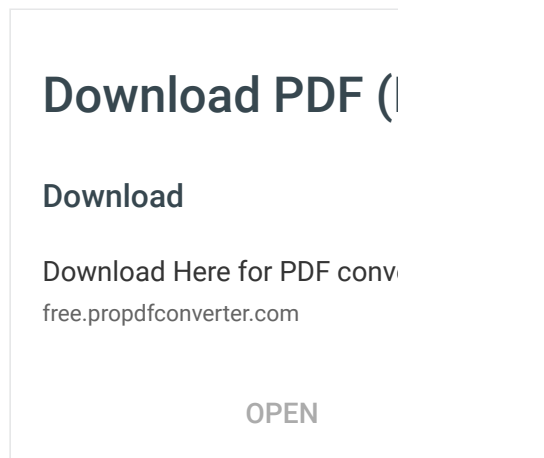


Enrollment in the Detroit school district is down by 3,000 students compared with this time last year, Superintendent Nikolai Vitti said during a school board meeting Tuesday.

Subscribe

What that number means is unclear because, like last year, the district still has about another month to find these students. When data last year was official at the end of the count period, the district had 51,000 students.

Count Day enrollment numbers must be audited by intermediate school districts, which provide services for schools. The numbers are then sent to the state. The count is more difficult this year because school leaders have to account for students learning in person and online, which is more difficult than last year's process.



Schools across the state are reporting dips in their preliminary enrollment numbers. [Flint Community Schools](#) lost about 500 students compared with last year's fall count, and [Kalamazoo Public Schools](#) lost 248 students.

"I'm very concerned where we stand as a district on student achievement," Vitti told board members about the large number of missing students. He also was alarmed about students stressed over the academic year, parents struggling to support learning at home, and potential increases in chronic absenteeism.

Losing 3,000 students, even with about a month to boost those numbers, is a significant effect of the pandemic, which has disrupted learning for district students and staff. For weeks, the district has mobilized staff and

But that still leaves 3,000 students unaccounted for. The loss won't be a financial hit for the district this year because the state changed the way it is calculating funding for schools. It will, however, hit next year. In Michigan, state funding follows students, so in ordinary years every student lost means a loss of per-pupil funding. The change in state law for this year, because of the pandemic, lessens that blow.

Vitti warned that student absenteeism is climbing this year. A student is chronically absent if they miss 18 or more instructional days in a school year.

In the 2018-2019 academic year, 70% of the students in the Detroit district were chronically absent. The rate improved to 63% in 2019 after the district launched several initiatives, including putting an attendance agent in every school. Chronic absenteeism is also a problem for some of the city's charter schools.

Although some schools now offer fully remote learning, Vitti urged school administrators to consider offering face-to-face or hybrid instruction during the next grading period to help encourage students to attend classes. A hybrid learning option would have students split time between in-person and remote classes during the week, if enough teachers and staff are willing to work inside school buildings.

"Principals are gonna be at the driver's seat at this change," he said.

Board treasurer Sonya Mays asked if the district could improve its efforts to engage students in online learning.

"Is there a way to do online learning better to capture these children?" Mays said. "We're going to have a lot of kids who won't be in a face-to-face situation for the next three to six months," she said, noting that families may still feel it's unsafe to return to school buildings due to the pandemic.

In the first month of the school year, there have been many complaints from students, parents, and teachers about too much screen time and jam-packed online schedules.

In response to those complaints, Vitti said he is urging school leaders to reduce screen time for students and to offer office hours to support online engagement. Schools may also adjust online schedules based on student and parent demand. The district must approve all schedule changes.

The district is also expanding Parent Academy workshops to help families navigate online learning tools. Yet Vitti stressed that online learning was "not designed for K-2 children." About 40% of the missing students are in grades K-3.

Parents have been struggling without enough food for their households or a lack of child care, Vitti said, which could also affect the parents' ability to support learning at home.

"Learning is not the number one priority at this time," for these struggling parents, he said.

Board member Deborah Hunter-Harvill recommended another board study session to discuss other strategies to support families. A study session was held earlier this year to discuss the district’s reopening plan.

“It all goes back to the fact that our families don’t have everything they need,” she said.

This story was originally published by [Chalkbeat](#), a nonprofit news organization covering public education. [Sign up for their newsletters here.](#)

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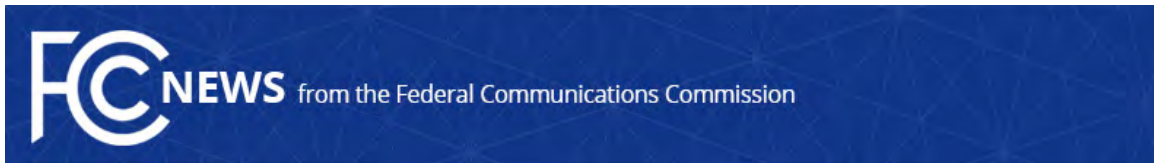
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EXHIBIT 14

**Media Contact:**

Alisa Valentin, (202) 418-2500

Alisa.Valentin@fcc.gov

For Immediate Release

**COMMISSIONER STARKS AND U.S. REPRESENTATIVE BRENDA LAWRENCE
(MI-14) ANNOUNCE CONNECTING MICHIGAN: FROM INTERNET INEQUALITY
TO DIGITAL EQUITY**

WASHINGTON, May 5, 2020—On May 7, 2020, at 1 p.m. (ET), U.S. Representative Brenda L. Lawrence (MI-14) and FCC Commissioner Geoffrey Starks will virtually host *Connecting Michigan: From Internet Inequality to Digital Equity*. This event will explore how the digital divide has exacerbated already existing inequities that impact the city of Detroit and other similarly situated cities in Michigan and throughout the United States. Panelists will present solutions for addressing the digital divide on a local, state, and federal level and will particularly focus on the urgent matter of connecting children, low-income communities, and communities of color to affordable and reliable broadband. This hour-long event will be livestreamed at www.fcc.gov/live.

“In Detroit, nearly half (40%) of the population has no internet connection of any kind, making it impossible for students and employees to continue their schooling and work remotely. This lack of high-speed internet access is being felt even more acutely than normal due to COVID-19. The ongoing spread of COVID-19 has disrupted daily life and made clear that high-speed internet access is not a luxury, but a necessity. At a time when Congress is discussing massive investments in infrastructure, we must ensure that broadband is part of the conversation,” said Congresswoman Brenda L. Lawrence (MI-14).

“The COVID-19 pandemic exposed inequities that impact communities of color and low-income communities across this nation, including access to affordable broadband. All of our communities, including major metropolitan areas such as Detroit, need and deserve equitable access to high-speed internet. Broadband impacts every aspect of our lives including access to education, employment, and civic participation. I look forward to centering the needs of Detroit as we explore best practices for addressing internet inequality,” said Commissioner Geoffrey Starks.

Confirmed Panelists

- U.S. Representative Elissa Slotkin (MI-08)
- Michigan Lt. Governor Garlin Gilchrist II
- Joshua Edmonds, City of Detroit
- Amina Fazlullah, Common Sense Media
- Mike Muse, The Mike Muse Show on SiriusXM
- Angela Siefer, National Digital Inclusion Alliance

Advance registration is not required. Audio/video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC's web page at www.fcc.gov/live. The FCC's webcast is free to the public.

In addition to open captioning, reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need and tell us how to contact you if we need more information. Make your request as early as possible. Last minute requests will be accepted but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For additional information about the virtual event, please contact Alisa Valentin in the Office of Commissioner Geoffrey Starks (202) 418-2500 or Alisa.Valentin@fcc.gov.

Office of Commissioner Geoffrey Starks: (202) 418-2500
ASL Videophone: (844) 432-2275
TTY: (888) 835-5322
Twitter: @GeoffreyStarks
www.fcc.gov/about/leadership/geoffrey-starks

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974)

EXHIBIT 15

MICHIGAN

Back to school puts financial strain on Michigan's most vulnerable families

Nushrat Rahman Detroit Free Press

Published 7:00 a.m. ET Sep. 29, 2020

Tauna Sanderling wakes up at 5:45 a.m., prepares breakfast and gears up for a full day of virtual school for her two grandchildren, niece and nephew. She has transformed her Detroit living room into a classroom with the children in separate corners.

Sanderling, 52, is one of millions of parents and caretakers across the country adjusting to going back to school during the pandemic and the costs associated with it.

She recently spent about \$500 on school supplies — learning books, flash cards and a chalkboard. It was an unexpected cost on top of paying utility bills and providing healthy meals. Sanderling, the primary provider for seven children, survives on just \$1,200 a month.

It's a tough burden to bear, but one she must shoulder, Sanderling said.

"I want to get in my closet and I want to cry," she said. "I cannot show them that I'm giving up and I'm frustrated, but every day I am frustrated and I have to cry to God all the time. What can I do? Guide me, help me."

As the new school year ramps up and the economic downturn of the COVID-19 pandemic continues, parents are having to make tough financial decisions. Nonprofits and social service agencies say they see families struggling to purchase materials for school, access child care and put food on the table. Experts worry that, without government intervention, long-term financial strain may widen opportunity gaps for children, and challenges to learning in the pandemic can exacerbate inequalities into the future.

Many Detroiters, like others across the state and the country, have felt the impact of the pandemic.

As of July 29, nearly a quarter of Detroiters were unemployed and nearly half said they couldn't afford to buy more food, according to the University of Michigan's Detroit Metro Area Communities Study, which surveyed 1,138 Detroiters online and over the phone.

More: Tracking coronavirus outbreaks in Michigan schools

Adjusting to school, especially during the pandemic, can add to the pressure families already face, especially for people who have lost work or are in low-paying jobs, said Kyle Smitley, who runs two charter elementary schools — Detroit Achievement Academy and Detroit Prep.

"Lots of families, generally in America, are one paycheck away from being in serious financial trouble ... and school coming back is just turning up the heat to that," she said.

Families need school supplies, child care and food

Purchasing technology and school supplies is a concern for families right now, said Cindy Eggleton, co-founder and CEO of Brilliant Detroit, a nonprofit offering 7,000 Detroiters health and education services.

Although the Detroit Public Schools Community District supplied thousands of students with laptops and internet connections, there is still a gap in access to technology for those in charter schools, Eggleton said.

Vanita Sanders, director of education and community initiatives for United Way of Southeastern Michigan, said more funding is needed to “close that technology gap for students who are in charters or students who live in the city of Detroit but may attend school somewhere else.”

It’s hard to quantify the lack of technology for charter schools, but it does exist, said Buddy Moorehouse, spokesman for the Michigan Association of Public School Academies, a charter advocacy group. However, he said he has not yet heard of a charter school that has been unable to provide its students with devices. Schools are adjusting their budgets and individually fundraising for supplies. Some also used federal relief funds.

The City of Detroit in July announced a \$1.4 million investment, from mortgage lender Rocket Mortgage to Connect 313, the city’s effort to ensure all Detroiters have digital access. Connect 313 launched in June to provide Detroiters with devices, internet, technical support and digital literacy. Nearly 30% of Detroit households don’t have internet access and 45% have no access to a computer, according to Connect 313.

Families need a host of supplies — devices, headsets, appropriate high speed WiFi — to create “learning nooks” for their children within homes, Sanders said.

“There were a lot of families that either didn't have the resources or they weren't ready for all the virtual learning,” Sanders said.

More: Fiat Chrysler to pay \$9.5M in SEC probe related to diesel emissions cheating scandal

United Way of Southeastern Michigan plans to donate 3,000 backpacks to ninth graders in the Detroit Public Schools Community District and another 3,300 to sixth and ninth graders in some Detroit charters and southeast Michigan schools. Included in the backpacks are noise-canceling earbuds, whiteboards and markers to help students with virtual learning.

Another concern is child care, Sanders said. Health risks, work-from-home routines and the challenge of finding employees have rocked day cares across metro Detroit. And options for parents may become even more unpredictable as school districts decide whether they will hold in-person instruction.

“Everyone can't work virtually, so parents aren't able to find affordable care for their children ... or just having someone who's at their home to be able to watch their children while they are working and the children are working virtually,” she said.

Food insecurity is an ongoing challenge, too. Since March, Gleaners Community Food Bank has increased its food distribution within southeast Michigan by 40%, said Stacy Averill, vice president of community giving and public relations for Gleaners.

“There are new hardships that families are facing that they may never have had to face before,” Averill said. “As resources are strained, making sure that there is healthy food in the household could be a struggle as well.”

Before the pandemic, Gleaners' monthly distribution of food was about 3.5 to 4 million pounds a month, reaching about 100,000 households. Since the pandemic, average distributions per month have risen to 6.5 million pounds for 150,000 households, she said.

"We continue to average about 230 households for each of our drive-up mobile distribution sites," Averill said. Gleaners plans to continue extra food distribution into the fall, knowing that families need help as they navigate the school year, she said.

Maria Dalton of Detroit understands this all too well.

Although she is able to provide meals for her kindergartner, feeding "a growing 5-year-old" is something she constantly worries about. She hears similar concerns from her friends.

"I don't think I realized how much having those two meals a day mattered until now," she said of the meals students would typically receive in school. "I don't think any of us realized that," said Dalton, 40, who has to work a weekend job at a grocery store in addition to her-full time job.

For families who don't have transportation like she does, it may be impossible to get food from schools, churches or food banks, she said.

Still, amid these financial worries, Dalton is a dedicated mom trying to "maintain some form of normalcy for my child," she said.

The extra \$600 in weekly federal unemployment aid helped families stay afloat, according to experts. Without it, many are struggling.

Theresa Mitchell, 38, says the \$362 in weekly unemployment benefits she receives is barely enough, as she helps her two children who are in kindergarten and first grade attend school virtually. Mitchell lost her job at a local nonprofit in February.

"Going from more than just shy of \$4,000 a month to just barely \$800 [bi-weekly] — that's a drastic decrease in income for us," Mitchell, who lives in Detroit, said. "Where we were already budgeting, we really have to budget now. And it's important to me that my kids don't notice a difference."

Mitchell spent an unexpected \$300 on supplies — a table and additional technology. That's on top of utility and grocery bills.

"It's a hard pill to swallow, but definitely one that has to be done," she said.

Experts: Social supports should continue

The CARES Act, extra unemployment benefits, eviction moratoriums and utility shutoff protections helped people facing financial strain.

With benefits rolling back, people are now struggling to make ends meet and stay in their homes, said Matthew Diemer, a developmental psychologist and professor of education at the University of Michigan.

"I think a lot of us are concerned about what the fall and winter might bring," he said. Social supports at the state and local level helped, he said.

But the pandemic could widen what researchers refer to as opportunity gaps — the often wide differences in resources and educational opportunities that exist between students such as those from low-income families and those from wealthier families. For example, most students from low-income families weren't able to afford learning alternatives such as private tutors that were readily available to their higher-income peers during the spring and summer when school buildings were closed.

Learning loss will likely be greatest among Black and Hispanic students from low-income families because they lack of access to high-quality internet and individual devices, according to an analysis from McKinsey & Company, a consulting group. The average K-12 student in the country could lose \$61,000 to \$82,000 of their potential lifetime earnings because of COVID-19-related learning losses. But it's worse for Black and Hispanic Americans. While white students could earn \$1,348 less a year over a 40-year working life, Black students could earn \$2,186 less a year and Hispanic students could earn \$1,809 less per year, according to the analysis.

William Elliott, professor of social work at the University of Michigan, said American families need long-term solutions. He recommends "federal interventions" for the next couple years, like mortgage forgiveness and rent relief coupled with policies to build wealth.

"It's not enough simply to have income to live day to day," he said. "They also need specific policies that help them build assets in their homes, help them to invest in the stock market."

Congress remains deadlocked over another stimulus bill.

President Donald Trump in August announced an extra \$300 in weekly federal unemployment aid after a previous \$600 weekly supplement ended in July. Claimants in Michigan began receiving the \$300 benefits last week.

Elliott said people have found themselves relying on family networks for financial help, living in combined housing areas and going to food banks, but this is temporary, he said.

"How do we continue to make a semblance of the American Dream and not allow this to be a moment in which inequality — which is already quite large — (will) be further exacerbated by both educational losses and wealth losses and income losses?"

How to get help

For emergency food assistance, call 211 or Michigan's statewide toll-free number: 844-875-9211. If your children are part of the National School Lunch and Breakfast programs, distributors can be found below. Find a food pantry near you by (call ahead for hours of operation and eligibility requirements):

Detroit Food Resource Finder (Detroit only): 313-876-4000

Forgotten Harvest (southeast Michigan only): www.forgottenharvest.org/find-food/

Meals on Wheels: www.mealsonwheelsamerica.org/find-meals

Gleaners Community Food Bank (southeast Michigan only): 866-453-2637; www.gcfb.org/gleaners-covid-19-response/

For school supplies help, families can also dial 211.

To find child care options, families can go to United Way of Southeastern Michigan's Connect4Care Kids program at www.unitedwaysem.org.

Nushrat Rahman covers issues related to economic mobility for the Detroit Free Press and Bridge Detroit as a corps member with Report for America, an initiative of The GroundTruth Project. Click here to support her work.

Contact Nushrat: nrahman@freepress.com; 313-348-7558. Follow her on Twitter: @NushratR. Sign up for Bridge Detroit's newsletter. Become a Free Press subscriber.

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EXHIBIT 16

Districts Pivot Their Strategies to Reduce Chronic Absenteeism During Distance Learning

By Wade Tyler Millward

Jul 29, 2020



Shutterstock / DhineshRaj

*This article is part of the report **Education in the Face of Unprecedented Challenges**.*

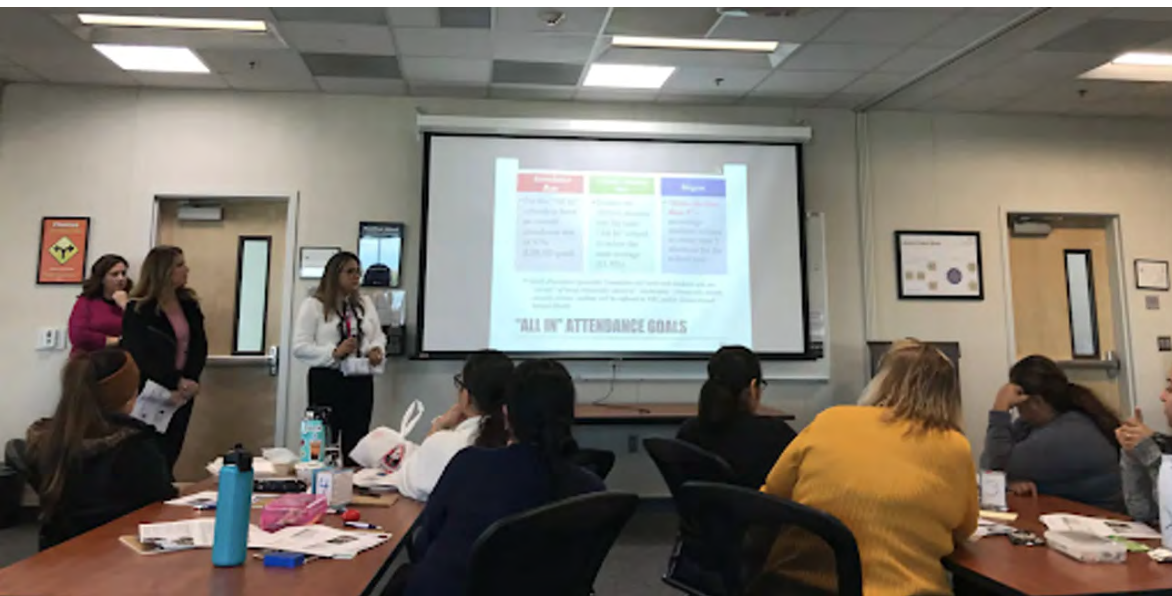
Erin Simon had big goals for this school year. The director of student support services for Long Beach Unified School District wanted to reduce the number of local students who were chronically absent, a term that refers to those **who miss 15 or more school days** of the academic year.

This has been a goal of Simon's since she joined Long Beach Unified in fall 2013. But it has proven elusive. Her district's chronic absenteeism rates have actually increased, from **13.3 percent** (about 10,000 students) in the 2017-2018 school year, to **15.1 percent** (about 11,000 students) in 2018-2019.

By comparison, the state of California reported **a 12 percent chronic absenteeism rate** among students in 2018-2019, representing 676,000 students.

Simon was confident that her team's efforts would help. In the early months of 2020, her team expanded an attendance campaign called **"All In,"** from four to 25 schools across the district, which is home to 85

public schools in total. The team established a partnership with a local housing project where some of their chronically absent students live and coordinated attendance outreach activities, which included workshops to educate teachers, staff and guardians on the consequences of missing school.



Members of the Long Beach Unified School District “All In” team conduct training on building a culture of attendance and brainstorming barriers to entry (Credit: Erin Simon).

The district also opened 26 [Family Resource Centers](#), where families of enrolled students can receive health-related services from school counselors and psychologists as well as support related to parenting, behavior management, crisis intervention, suicide prevention and attendance issues.

“We encourage students to attend every second of every day,” says Simon. “It’s crucial to academic achievement.”

On March 16, the district [closed schools](#) to help contain the outbreak of COVID-19. Distance learning began March 23.

Simon and the rest of the district turned their focus to [food security](#), internet connectivity for families in need and online suicide prevention assessments. But Long Beach Unified—like other schools, districts and the organizations they partner with to combat chronic absenteeism interviewed by EdSurge—haven’t given up on efforts to help students attend school, even without a physical school to attend.

Understanding Chronic Absenteeism

The U.S. Department of Education reported that for the 2015-2016 school year, [more than 7 million students](#)—or 16 percent of all students—and 20 percent of high school students are chronically absent.

Research shows that attendance is key to academic success, so preventing absenteeism is critical.

Reading and math skills are hindered for students who are chronically absent as early as kindergarten. In

elementary school, frequent absences are linked to a higher likelihood of dropout—even if attendance improves over time.

In addition to causing learning gaps, absenteeism also has budget implications. In seven states, including California, school districts are funded through property taxes or state allocations based on school attendance. Districts in communities that don't generate high property taxes look to attendance revenues from the state.

To address absenteeism, school administrators have turned to outside groups to help implement data-informed intervention and outreach strategies.

Attendance Works, headquartered in San Francisco, has worked with more than 24 school districts—like Long Beach—across 32 states, and facilitates a peer learning network involving more than 35 states.

In 2019, Attendance Works began to coach Long Beach's "All In" staff to use the organization's evidence-based Teaching Attendance Curriculum to strengthen prevention and intervention strategies, which include creating a welcoming environment, using effective messaging and recognizing good and improved attendance. The organization also helped "All In" staff design three peer learning network sessions for the 25 "All In" schools.

Attendance Works generates about half of its revenue from foundations. The remainder comes from service fees that amount to \$1,800 per day. Its contract with Long Beach Unified for the 2019-2020 school year is for \$21,110.

Hedy Chang, executive director and founder of Attendance Works, says that when the new school year resumes, school officials may well find more students at risk for chronic absenteeism due to economic or housing instability. Parents may have lost their jobs, students may need to work to support the family, family members may have died due to COVID-19. And students may be unwilling to return to school in person if they have a health condition or live with someone who is more vulnerable to the virus.

Identifying students at risk of absenteeism requires a mix of tactics. For example, gathering information such as which students lack internet connectivity, who was chronically absent prior to COVID-19 and understanding whether a student comes from a low-income family, has a disability, is involved in foster care or is homeless, can help staff better recognize each student's circumstance and develop a more effective support system.

Chang says it is important for schools to check that they have updated contact information for students and families, so that staff can reach out and help students and guardians navigate what will be a radically different school year. It is also important to ensure that students have devices to support virtual class, coursework and communication.

Her organization recommends that attendance is taken for every in-person and virtual instructional experience. When schools resume in-person learning, or for those taking a hybrid approach, Chang recommends that schools convene a team of social-emotional and health support staff to reach out and identify students who lost out on significant learning opportunities since schools switched to remote learning. From there, they can develop and implement outreach, engagement and support strategies for these students and families.

Because of COVID-19, the federal government has [waived participation rate](#) as an Academic Achievement indicator for one year, but addressing absenteeism is still top of mind for many administrators.

Take, for example, the growing interest in Attendance Works' services. Its webinars usually host about 500 attendees but that number has grown since the pandemic outbreak. About 4,600 people showed up for a recent webinar, Chang says.

Postcards Prove a Point

On the other side of the country, another effort, housed at Harvard University, is also helping districts tackle chronic absenteeism. Started in 2015, the [Proving Ground](#) program helps school districts leverage data to design, plan, implement and test interventions to improve learning outcomes. The program has 59 school district partners, most of them in New York and Ohio.

One of its first successful intervention programs involved weekly postcards sent home to families of students in early grades as absences occurred. The program lasted over the course of 13 weeks during the 2018-2019 school year and included 5,602 students from two unnamed districts. Each card contained a handwritten message including a count of cumulative days missed, information on the lessons missed in class that day, and a guide to help parents understand how the absences impacted their child's academic progress. Researchers found that this approach reduced student absences by [an estimated 7.9 percent](#).



Sample postcards (Source: [Proving Ground](#))

In fall 2020, the program will launch intervention efforts with all of its partner schools. Interventions will include family engagement including outreach and follow-up designed to foster bi-directional communication between school and caretaker and enable problem solving to address reasons for absenteeism, restorative circles in elementary grades and intensive case management for high-absence students.

Due to COVID-19, Proving Ground aims to support its partner schools through a newly launched app that suggests strategies based on data shared with Proving Ground. The app will help districts improve upon selected strategies over time and allow districts to connect and share information with each other.

For one district that provided Proving Ground with data, it found that students were less likely to attend school virtually than they were to attend in person. Students who were chronically absent before COVID-19 were unlikely to attend school virtually at all.

“We don’t know what attendance is going to look like” in the fall Herh says. “The key, if attendance cannot be measured in the same way, will be replacing it with something with similar utility. Attendance is an incredibly valuable tool for identifying students in need of additional support early. Failing to replace it would make it extremely hard for districts to support students, especially if they cannot see them in person every day.”

City Year Shifts Attendance Intervention Strategy

Like Simon, the student support services director at Long Beach Unified, Cory Jones, principal of Rosa Parks K-8 School in Sacramento, Calif., was fighting a losing battle to reduce chronic absenteeism at his

school. During the 2018-2019 school year, the chronic absenteeism rate at Rosa Parks reached 26.5 percent (about 240 students)—up from 17.2 percent (about 150 students) percent during the 2016-2017 school year.

Before COVID-19, Jones saw improvement in attendance with help from the local chapter of City Year, an education nonprofit that is part of the AmeriCorps national service network, which has approximately 350 partner schools and 40,000 students it interacts with directly through one-on-one and group settings.

City Year Sacramento members participated in school attendance teams, evaluated data trends, identified students in need of support and determined appropriate interventions. Efforts included attendance rallies, incentives and teaching students about the consequences of missing school, and engaging those who needed encouragement and support.

Students who successfully demonstrated sustained improvement in their attendance received attendance graduation certificates and pins. On one occasion, students who came to school on a particular day entered a raffle for the chance to pie a City Year Sacramento member or Jones in the face.

“Research shows that if a child feels a personal connection at school, it raises their chances at school exponentially,” says Jones.

Coinciding with these efforts, Sacramento Rapid Transit provided all students in the city with valid student IDs free bus rides to help overcome transportation obstacles. City Year Sacramento members helped students acquire bus passes through the initiative as well as alarm clocks.

From Jan. 6 to Feb. 24, early data showed about 60 percent of students increased their average daily attendance.

Then, Sacramento City Unified School District closed schools on March 16. “That pretty much sidelined the efforts we were making,” says Jones. “Now that face-to-face interaction, the most powerful part of it, was eliminated.”

As schools transitioned to distance learning, City Year Sacramento turned its focus to family engagement. Members made about 600 calls to parents and students to check in on well-being, ask about obstacles to learning and provide technical support on tools like Google Classrooms and Zoom. They also helped translate district communications into other languages. The list of students contacted was based on those who did not participate in online learning activities.

City Year Sacramento also created about 50 videos and social media posts to engage students. Video subjects ranged from reading stories to health to dance to origami. Members participated in Google

Classrooms, managing chat windows, creating activities and warm-ups and conducting small group breakout sessions for homework and academic support.

Healthy Habits at Home video from the City Year Rosa Parks team (Source: City Year Sacramento)

“We will build off of these initial distance learning initiatives for the upcoming school year and be able to provide hybrid and distance learning support,” says Jeff Owen, vice president and executive director for City Year Sacramento.

The national City Year organization does have a history of success with attendance. [During the 2017-2018 academic year](#), students in grades six to nine coached by City Year AmeriCorps members improved their attendance by at least 2 percentage points, which translates to more than three additional days in school or more than 5,900 collective additional days of instruction.

A recent [study](#) from Johns Hopkins University showed that the more time a student spends working with a City Year AmeriCorps member, the better their attendance and academic outcomes. Students who spent the median amount of time with an AmeriCorps member—16 hours in math or English and three hours for behavioral support—were 42 percent less likely to fall off track in English, a third less likely to fall behind in math and 41 percent less likely to fall behind in attendance. In addition, students furthest behind in attendance, grades, test scores or social-emotional skills saw the greatest gains with one-on-one support from a City Year member.

City Year services can cost about \$200 per student per year for a variety of school-wide and individualized supports, according to Owen. Schools nationwide usually cover about 25 percent of the total cost to deploy the team of City Year members in schools. About 50 percent comes from

contributions and grants from foundations, corporations and individuals and another 25 percent is funded by the federal government through AmeriCorps.

Jones hopes that Rosa Parks and City Year Sacramento can continue some of the new efforts and projects once the school returns to in-person learning or a hybrid model.

“This is a time to stretch and learn new things,” he says. “These are things we may follow up on when we return to school.”

Back in Long Beach, the end of the school year saw Simon and her colleagues cross referencing chronic absenteeism lists to make sure families received the support they needed. They assisted families with finding temporary shelters and community resources and provided wellness checks on the staff. “If the staff is not well, they’re not going to serve the students well,” Simon says.

Long Beach will [start its school year online only](#), possibly shifting to in person learning later in the year. Simon and her team have been talking to families by phone, not just to share the importance of attendance, but to empathize with their circumstances.

The focus for her team is on participation over attendance. Once conditions are safer, district staff plan to visit students’ homes. Family Resource Center staff provide telecounseling to students during summer school and virtual guardian workshops on topics such as anxiety and grief.

“If you didn’t build a relationship before COVID-19, you’re not going to hear from those families,” Simon says. “If they trust you, they’ll accept your calls on a more consistent basis. People see that more so now.”

This story is part of an EdSurge Research series about how school communities across the country are connecting research and practice. These stories are made publicly available with support from the [Chan Zuckerberg Initiative](#). EdSurge maintains editorial control over all content. (Read our ethics statement [here](#).) This work is licensed under a [CC BY-NC-ND 4.0](#).

[Wade Tyler Millward](#) is a journalist based in Oakland, Calif. His coverage areas include education, business, finance and technology.

Coronavirus Teaching & Learning

EXHIBIT 17



The Coronavirus Crisis

School Attendance In The COVID Era: What Counts As 'Present'?

September 24, 2020 · 6:00 AM ET



ANYA KAMENETZ



Charlotte Fu for NPR

From shiny red pencils reading "My Attendance Rocks!" to countless plaques and ribbons and trophies and certificates and gold stars: For as long as anyone can remember, taking attendance — and rewarding kids for simply showing up — is a time-honored school ritual.

For good reason: Just being there, day in, day out, happens to be one of the most important factors that determines a child's success in school. And average daily head count forms the basis of school funding decisions at the federal, state and local level.

Yet now, like so many other aspects of education, that simple measure — "here" or "absent" — is not so simple anymore. States are having to update their attendance policies to cover the realities of virtual learning. And where school is being held in-person, strict coronavirus health protocols mean students must now stay home at the slightest sign of illness, or to quarantine in case of a potential exposure.

So the emerging questions for educators and parents are: What is the best way to measure whether students are participating in learning? And who will be held responsible for a student who doesn't participate? The student? Their caregiver? The school?

Article continues after sponsor message

It all adds up to "a paradigm shift," says Hedy Chang, who directs Attendance Works, a national and state level initiative that treats attendance as a key lever to student success. It was Chang's research in the mid-2000s that helped lay the groundwork for the current policy focus on chronic absenteeism. She found that missing more than 10% of school days in a year was an "early warning signal" for students earning low grades and eventually dropping out, and that it affected low-income students disproportionately.

Responding in part to this research, the federal Every Student Succeeds Act, signed into law in 2015, raised the stakes on attendance. It required states to add at least one nonacademic measure of success into their state accountability systems. Thirty-six states and Washington, D.C., chose chronic absenteeism. Not just student success, but school success, would be defined in part by this metric: How many kids missed more than 10 percent of days in a school year.

The carrot and the stick

Mariajose Romero, a Pace University sociologist who has researched attendance for decades, calls it "a piece of information that has tremendous political currency," which only intensified when it became a measure of school accountability. Not only students, but also schools, succeed or fail based on the students who show up every day. And so, "it's important to count people properly."

School systems responded to the new pressure of the federal law by trying to improve attendance using both the carrot and the stick. The positive side: celebrity public awareness campaigns, like this partnership, called "Stay in the Game!" which features the Cleveland Browns. Plus, all those shiny red pencils.

The negative side included legal action. U.S. Senator Kamala Harris, now the Democratic vice presidential candidate, has been criticized for an anti-truancy program she introduced as San Francisco district attorney that threatened some parents of chronically absent children with jail. Another weapon wielded against parents: charges of "educational neglect." In New York City this spring, some school staff reportedly called child welfare officers when students didn't sign in for online learning — an action that could potentially result in children being removed from their families.

Chang says schools need to shift away from punitive means, especially now. She counsels "a positive, problem-solving approach."

A positive approach is exactly what Misha Karigaca says his California district, Oakland Unified, is taking these days. His title — coordinator of attendance & discipline — suggests that attendance has historically come under the category of a student behavior to be rewarded or punished.

These days, it's different. There's a "heightened awareness to our work," Karigaca says. Educators, he explains, are "understanding the fragility of students having a high chance of missing out on learning opportunities."

He points to "Oakland Undivided," a public-private partnership that has raised \$13 million to provide 25,000 laptops and Internet hot spots to Oakland families. Karigaca says it's part of a recognition that keeping kids connected to school is "a community effort ... the whole city is behind it."

Does answering a text message "count"?

One tricky matter that schools have to decide in this era is how exactly they're going to credit "attendance" when online learning doesn't always mean showing up on a video conference. Districts such as Los Angeles Unified have been criticized for setting the

bar too low by decreeing that any interaction — even a single text between a parent and a teacher — counts as "participation" for a given day.

Paolo DeMaria, the superintendent of public instruction for the state of Ohio, says he's trying to shift districts toward recognizing whether students are making academic progress. "If they're participating and engaging, that counts. And that's important," he says. The flexibility provided by remote instruction is a good thing, he says.

He adds that he's had many conversations with parents of teenagers who don't start schoolwork until noon. And that's perfectly fine, he says, if they're making progress in their studies:

"I think the long-term goal is to actually be creative and understanding," DeMaria explains. "We're so used to testing and just taking attendance as kind of anchors of measurement. And we need to take our thinking to the next level."

Of course, this raises the question of who is extended this kind of "creative" leniency. Romero, at Pace University, worries that high-income schools may be more likely than those in poor neighborhoods to provide excused absences for, say, a mid-year vacation. Meanwhile, she adds, "sometimes I'm concerned that the issue of chronic absence is used to demonise families in need."

With funding hanging in the balance, in a year when schools already face deep cost-cutting and huge additional burdens, another big question is whether too-loose attendance policies can let schools off the hook by misrepresenting how many students they are actually serving, and how well.

The school leaders interviewed for this story talked a lot about keeping lines of communication open as a way to remove barriers to online learning, or to reassure parents of safety measures for in-person learning.

DeMaria, in Ohio, says that despite all the challenges, promoting attendance these days, whether in-person or hybrid, means "making sure you've got communication channels that can reach every family in every state."

Sometimes, though, that communication includes reminding parents of compulsory attendance laws. In Mississippi, where some schools are opening in-person and others are online, Carey Wright, the state Superintendent of Education, has just put out a notice reminding parents, "if you want to keep your child at home and not in school, you've got to give us some kind of home schooling program."

Chang would like to see family communication be a big part of part of a "positive, problem-solving approach." Getting devices and Internet connections into homes is a basic need that hasn't yet been met, it's estimated, for millions of students.

Beyond that, schools need to focus on updating contact information for all students, she says. And schools should take advantage of the large amounts of data provided by learning management software systems: "Notice each time kids show up and notice when they don't show up and look for patterns on whether there could be particular types of learning opportunities that they miss."

But what may be most important, Chang says, is a new type of data collection: Call it the friends list. The key question: "Do kids and families feel there is someone that they can talk to if they have a challenge?"

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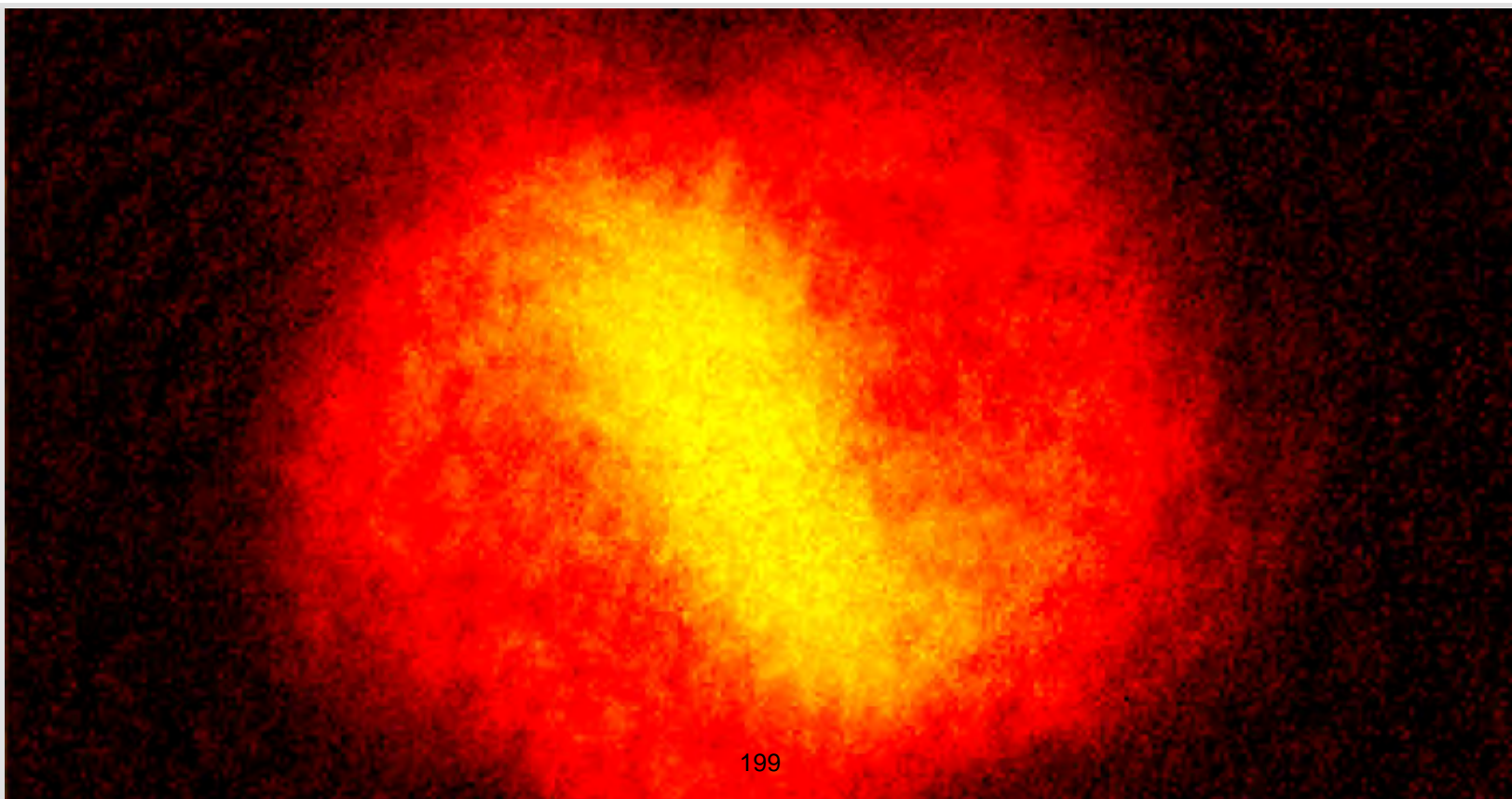
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EXHIBIT 18

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of BARBARA NEWCOMB, Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GLORIA NEWCOMB,

Respondent-Appellant

and

JAMES EDWARDS,

Respondent.

UNPUBLISHED

May 2, 2000

No. 222115

Jackson Circuit Court

Family Division

LC No. 94-018336-NA

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Respondent-mother, Gloria Newcomb, appeals as of right from the circuit court's order terminating her parental rights to her minor daughter, Barbara Newcomb (DOB 3/28/91), pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm.

On November 7, 1997, the Jackson County Intermediate School District filed a petition requesting that Gloria Newcomb (hereinafter respondent) be charged with educational neglect. This petition alleged that during the 1997-1998 school year, respondent's minor daughter, Barbara Newcomb, a six-year-old in first grade, had missed twenty-one days of school and had been tardy on eight days. Further, respondent had failed to respond to letters from the Intermediate School District seeking to address this problem. Respondent was charged with educational neglect, the court appointed an attorney for Barbara, and an adjudication hearing was scheduled for January 7, 1998.

At the January 7, 1998, hearing respondent entered a no contest plea. Barbara was made a temporary ward of the court under the supervision of petitioner, the Family Independence Agency (FIA). Barbara was to remain in the custody of respondent, however, who was ordered to cooperate with the caseworker and with any programs deemed in Barbara's best interest. The FIA was ordered to investigate alternate placement. At a February 4, 1998, review hearing, the court ordered that Barbara continue as a temporary ward of the court, but that placement be changed to out-of-home placement with a relative, Lagina Poole. Respondent was ordered to cooperate with the caseworker in any programs deemed in Barbara's best interest, including visitation arrangements.

Respondent did not immediately comply with the court's order for relative placement, failing to release Barbara into Poole's care. Thus, on February 10, 1998, the FIA filed a motion and order to show cause alleging this refusal to obey the court order. Barbara was placed with Poole on February 11, 1998, and at a February 25, 1998, hearing respondent was found in contempt and ordered to serve two days in jail, February 26-28, 1998. On March 3, 1998 a bench warrant was issued for respondent because of her failure to appear at the jail on February 26, 1998. The warrant was executed on May 18, 1998, and following a hearing on that date respondent was again found in contempt. Respondent was ordered to serve five days in jail, the original two days ordered in February and three additional days for her failure to comply with the original order.

Meanwhile, on May 6, 1998, a second review hearing was held regarding Barbara's placement. The court ordered that Barbara be continued as a temporary ward of the court, with out-of-home placement with Poole to continue under supervision of the FIA. The court ordered respondent to participate in substance abuse assessment and recommended treatment and testing, psychological evaluation and recommended treatment and supervised visitation as arranged. The court also ordered Poole to cooperate with Barbara's educational planning. On July 30, 1998, Barbara was removed from Poole's home and temporary placement in an FIA licensed foster home was effectuated. At the next review hearing, August 5, 1998, the court continued this out-of-home placement.¹ The court additionally ordered Barbara to participate in psychological evaluation and recommended services.

On September 25, 1998, a different relative placement was effectuated as Barbara was placed with her adult sister Lenise Newcomb (DOB 9/1/78). Efforts toward Lenise's adoption of Barbara were also initiated by the FIA. At a November 4, 1998, review hearing the court ordered that Barbara be continued as a temporary ward, with out-of-home placement with Lenise to continue under FIA supervision. Respondent was ordered to cooperate with recommended services including visitations, substance abuse assessment and recommended treatment and testing, psychological assessment and recommended counseling. The court ordered Barbara to participate in psychological assessment, and ordered that sibling visitations be arranged. These orders remained in effect following the next review hearing on February 3, 1999.

At a May 4, 1999, review hearing, the placement orders were kept in effect. However, the court this time found that continuation of reasonable efforts to improve the conditions that had necessitated temporary wardship were no longer consistent with a permanency plan. The court found that progress was no longer being made to alleviate or mitigate the conditions which had required the court's initial action, and that efforts toward completing permanent placement were appropriate. On

May 21, 1999, the FIA wrote a letter to the county prosecutor requesting the issuance of a petition for termination of parental rights to Barbara. In a May 24, 1999, letter, the FIA advised respondent that termination proceedings had been initiated because respondent had failed to comply with the court's orders to attend substance abuse treatment meetings and to undergo psychological assessment. At a June 8, 1999, hearing, the court scheduled a show cause hearing on the termination petition for August 2, 1999.

At this termination hearing, respondent-father James Edwards voluntarily released his parental rights to Barbara. The court then heard the testimony of both the FIA foster care worker assigned to Barbara's case, and a counselor who provided details of respondent's efforts in regard to the court ordered treatment.

Nancy Martini, a part-time counselor at the Washington Way Recovery Center testified that respondent first contacted the treatment center on March 10, 1999. Martini testified that respondent was subsequently scheduled to begin substance abuse treatment in an intensive outpatient program, but that respondent failed to attend sessions during March and April. After respondent was reevaluated in May she began a treatment program, but attended only sporadically and dropped out of the program in early June. Martini testified that on July 5, 1999, respondent again began a treatment program, again attending only sporadically, but that in the two weeks leading up to this termination hearing respondent had begun to attend regularly and appeared to be taking more responsibility. Martini testified that respondent's progress in the treatment program was slow, and that the program could be completed in three months.

Carol McDermott, respondent's FIA foster care worker, testified that despite numerous referrals to a variety of treatment centers, respondent failed to secure treatment until the termination hearing was upon her. McDermott testified that respondent missed or was late to numerous appointments at every treatment facility. She further testified that including satisfactory completion of the substance abuse program at Washington Way, it would be at least nine months before respondent could set her affairs in order such that she could be in a position to provide for Barbara. With regard to Barbara's placement with Lenise, McDermott testified that this was a stable environment, that there was no recommendation to change this placement, and that respondent's exercise of visitation was sporadic. McDermott testified that to ensure Barbara's long-term stability, she recommended terminating respondent's parental rights and making Barbara's placement with Lenise permanent.

The court then took judicial notice of the court file on stipulation of the parties and, finally, respondent testified on her own behalf. Respondent testified that her initial poor record of attendance at appointments for treatment and evaluations was the result of her conflicting work schedule and the failure of the FIA to adequately communicate with her regarding notice of appointment times. Respondent testified that she was now regularly attending Washington Way because her work schedule allowed it and because the threat of losing her rights to Barbara spurred her on. Respondent testified that she could finish the substance abuse program, that she would attend an FIA scheduled psychological evaluation if given notice, and that she was in a position to secure a suitable home. Respondent testified that she saw Barbara, at Lenise's home, every day, and that she did not think Barbara would be better off if she was not in her life anymore.

At the conclusion of this hearing, the court found that statutory grounds for termination had been proven by clear and convincing evidence and that it had not been shown that termination was not in Barbara's best interests. An order terminating respondent's parental rights to Barbara was entered on August 23, 1999. It is from this order that respondent now appeals.

A two-pronged test applies to a decision of the family division of circuit court to terminate parental rights. "First, the probate court must find that at least one of the statutory grounds for termination, MCL 712A.19b; MSA 27.3178(598.19b), has been met by clear and convincing evidence." *In re Sherman*, 231 Mich App 92, 97; 585 NW2d 326 (1998). This Court reviews the family court's decision under the clearly erroneous standard. MCR 5.974(I); *In re Sours Minors*, 459 Mich 624, 633; 593 NW2d 520 (1999); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). A finding of fact is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Miller, supra* at 337; *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996). To be clearly erroneous, a decision must be more than maybe or probably wrong. *Sours, supra* at 633. Further, regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *Miller, supra* at 337.

Once a statutory ground for termination of parental rights is established, the court must terminate parental rights unless it finds that termination of parental rights to the child is clearly not in the child's best interest. MCL 712A.19b(5); MSA 27.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472; 564 NW2d 156 (1997). Once the petitioner has established a ground for termination of parental rights, the burden of going forward with evidence to establish that termination is clearly not in the child's best interest rests with the respondent. *Sherman, supra* at 98; *Hall-Smith, supra* at 472-473. If the respondent fails to produce any evidence rebutting the presumption that termination of parental rights is appropriate, termination must be ordered, but if the respondent proffers evidence on the issue, the petitioner must satisfy the burden of proof. *In re Boursaw*, 239 Mich App 161, 179-180; ___ NW2d ___ (1999). Finally, this Court reviews the family court's now non-discretionary decision regarding termination in its entirety for clear error. *Sherman, supra* at 98; *Hall-Smith, supra* at 472.

We conclude that the court did not clearly err in finding that grounds for termination were established by clear and convincing evidence. The family court initially assumed jurisdiction in this matter based on a petition charging educational neglect. Ultimately, respondent's parental rights were in part terminated pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Section (3)(g) provides that parental rights may be terminated if:

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

This provision requires clear and convincing evidence of both a failure and an inability to provide proper care and custody. *In re Hulbert*, 186 Mich App 600, 605; 465 NW2d 36 (1990). The family court also found reason to terminate respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i). Section (3)(c)(i) provides that parental rights may be terminated if, after

182 days have elapsed following an initial dispositional order, the conditions which led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child. The determination of what is a reasonable time properly includes both how long it will take for the parent to improve conditions and how long the child can wait for the improvement. *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991).

The FIA's first contact with respondent regarding Barbara was November 7, 1997. This initial contact concerned respondent's failure to ensure Barbara's attendance at school. Because of an identical problem with an older daughter, Lydia Powell (DOB 2/3/84), the FIA had previously had contact with respondent from December 1994 until April 1996. This earlier case was closed out only when Lydia's attendance improved beginning in February 1996, after the initiation of proceedings toward establishing foster care. Despite the FIA's similar intervention on behalf of Barbara, she continued to miss an inordinate number of days at school over the next few months and the court again determined that out-of-home placement was necessary. This time, however, rather than satisfactorily responding to the court's action, respondent initially refused to comply with the court's order and was held in contempt of court. Only after the court successfully effectuated foster care, ultimately the relative placement with Lenise, was improvement and consistency shown in Barbara's care. Respondent does not contest these facts. Accordingly, there is clear and convincing evidence that respondent failed to provide proper care for Barbara in regard to her education. *Hulbert, supra* at 605.

Respondent's inability to provide proper care and custody is likewise established by clear and convincing evidence. *Id.* The court identified respondent's substance abuse problem, and a related inconsistent employment history, as the factors primarily contributing to educational neglect. Accordingly, from the time the court initially took jurisdiction over Barbara, repeated orders required respondent's participation in treatment and assistance services. Despite the approximately twenty months of oversight and review hearings, respondent consistently refused to participate in the court ordered services. Only in the two weeks immediately preceding the termination hearing did respondent make any progress in a substance abuse program. Respondent herself testified that this suddenly regular participation at Washington Way was initiated by the realization that termination proceedings were near completion. In addition, respondent never obtained a psychological evaluation, never went for drug screening, and demonstrated an inability to find suitable housing or steady employment. This record of negligible improvement, coupled with respondent's history of similar problems with another daughter, evidences an inability to properly provide the care Barbara needs.

There is, moreover, no reasonable likelihood that these problems will be rectified within a reasonable time considering Barbara's age. At the time of the termination hearing, the court had maintained jurisdiction over Barbara for more than a year and a half since the initial disposition order. Eight years old at the time of the hearing, Barbara was scheduled to repeat the first grade because she had missed school so often during the preceding year. Testimony suggested that even if respondent successfully completed the substance abuse program, estimated by Martini as another three months of treatment, it would be at least nine months before respondent could hope to have satisfied the additional court ordered counseling and evaluation. Moreover, respondent still needed to establish steady work and suitable housing. McDermott testified that because these lifestyle issues were identified as the root

of the educational neglect, respondent's failure to accomplish the court-ordered goals in the previous year and a half, coupled with the showing that respondent's minimal progress came only under the threat of final court action, was indicative of unlikely success on such a time frame. We find that the cited grounds for termination, MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g), were established by clear and convincing evidence.

We additionally find that the family court did not clearly err in concluding that termination of respondent's parental rights was in Barbara's best interests. *Sherman, supra* at 98; *Hall-Smith, supra* at 472. Respondent argues that because testimony shows that she was attending treatment meetings regularly at the time of the final hearing, the court's order terminating her parental rights was merely intended as punishment for her delayed participation in the court ordered programs. Respondent also argues that because Barbara is to be permanently placed with respondent's adult daughter Lenise, where, practically speaking, respondent's contact with Barbara will be unlimited, there is nothing to be gained by termination. We find no merit in these contentions.

McDermott's testimony established that Barbara has settled with her sister Lenise and that this suitable placement has resulted in stability that was desperately lacking when Barbara was with respondent. Respondent had the burden of going forward with evidence to establish that termination was clearly not in Barbara's best interest. *Sherman, supra* at 98; *Hall-Smith, supra* at 472-473. To that end, respondent merely testified that in the near future she could provide a suitable home and that despite her previous failures to comply with court orders, she would now do so. Respondent failing to produce any meaningful evidence rebutting the presumption that termination of parental rights was appropriate, termination was mandatory. See *Boursaw, supra* at 179-180. Although respondent's delayed participation in the court ordered treatment programs was assuredly a primary factor in the decision to terminate, it is clear that the court based its decision on the need to maintain Barbara's improved position and outlook, not a desire to punish respondent.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Helene N. White

¹ Although the court's orders of May 6, 1998 and August 5, 1998 indicate that Barbara's placement was to *continue with respondent*, on review of the record it is clear that Barbara was consistently in out-of-home placement during the relevant time period. This apparent clerical error in the court's orders does not bear on our resolution of this appeal.

EXHIBIT 19



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF HEALTH & HUMAN SERVICES
LANSING

ROBERT GORDON
DIRECTOR

Children's Protective Services Policy Manuals

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CPS - MIC INVESTIGATIONS

The Children's Protective Service Maltreatment in Care Unit (CPS-MIC) was developed by the Michigan Department of Health and Human Services (MDHHS) to investigate:

- Alleged abuse and/or neglect (CA/N) of a foster child placed in licensed foster homes and/or unlicensed/licensed relative homes or independent living.
- All complaints of abuse/or neglect of a child in a child caring institution (CCI) including youth homes, shelter homes, residential care facilities, halfway houses, camps, court operated facilities and detention facilities.
- Allegations of CA/N of a child in a child caring facility (CCF), including registered family child care homes, licensed group child care homes and licensed child care centers.

CPS-MIC Intake

When the intake process does not provide sufficient information to complete a screening decision, Centralized Intake (CI) will complete a preliminary investigation. This preliminary investigation must include attempted contact with the assigned foster care worker and if appropriate, the foster home certification worker or Division of Child Welfare Licensing (DCWL)/ Bureau of Community and Health Systems (BCHS) licensing consultant.

If the complaint is the third CPS complaint on a foster family or care provider **and** the complaint includes a child age three or younger, CI must conduct a preliminary investigation.

If the preliminary investigation indicates that the complaint may have basis in fact, a field investigation must be completed, if the complaint meets assignment criteria.

The Intake Decision Table for Investigation of Child Abuse and Neglect in Child Care Organizations/Relative Care specifies the responsibilities of CPS and the CPS-MIC for investigation of CA/N complaints received by MDHHS.

INTAKE DECISION TABLE FOR CPS AND CPS-MIC INVESTIGATIONS

Facility/Placement Type	Responsible Unit - Department	
	CPS	CPS-MIC
Child caring institution (detention centers; youth homes; shelter homes; residential care facilities, both long- and short-term; halfway homes; court operated facilities).		
Allegations against an employee of a CCI for CA/N of a child residing in a Child Caring Institution (CCI).		X
Allegations against a parent for CA/N (for example, during a weekend visit) while the alleged child victim is placed in the CCI.		X
Allegations against an employee of a CCI for CA/N made after the child has been returned to a parent's care.		X
Allegations against a licensed/registered provider or an employee of a child care organization of abuse/neglect of their own children.	X	
Child foster care-family, unlicensed and relative foster care providers, court operated facilities, and group homes (MDHHS, court, private agency, mental health, etc.).	CPS	CPS-MIC
Allegations against a licensed or unlicensed foster parent for CA/N while the alleged child victim resides in the foster home.		X
Allegations against a licensed or unlicensed foster parent for CA/N when both biological children and foster children reside in the home.		X
Allegations against a parent for CA/N (for example, during a weekend visit) while the alleged child victim is placed in foster care.		X
Allegations against a licensed or unlicensed foster parent for CA/N after the alleged child victim has been returned to a parent's care.		X
Allegations against a licensed or unlicensed foster parent for CA/N of biological children when foster children do not reside in the home.	X	

Allegations against a parent for CA/N of an alleged child victim prior to going into out-of-home care (but currently in out-of-home placement).	X	
Parents caring for children under court jurisdiction (in-home CPS and under MDHHS supervision following return home from foster care).	CPS	CPS-MIC
Allegations against parents for CA/N of children currently in their care.	X	
Allegations against parents for CA/N of a child in the parent's care (not under the court's jurisdiction).	X	
Child Care Facilities- CCF (complaints involving children, regardless of court jurisdiction, while in a licensed foster home).	CPS	CPS-MIC
Licensed registered facilities (registered family child care homes, licensed group child care homes, and licensed child care centers).		X
Allegations against a biological parent who is licensed to operate a child care facility of CA/N only against their own children.	X	
Unlicensed facilities (should be referred to The Department of Licensing and Regulatory Affairs and/or law enforcement).	n/a	n/a
Camps- licensed facility		X
Allegations against a bio parent who is licensed to operate a camp facility of CA/N only against their own children.	X	
Unlicensed facilities (refer to the Department of Licensing and Regulatory Affairs and/or law enforcement).	n/a	n/a

Multiple Families in Same Household

When CI receives allegations meeting assignment criteria on multiple families residing in the same household, and one of the families meets criteria for assignment to CPS-MIC, CI will assign all of the complaints within that household to CPS-MIC.

County Assignment

CPS-MIC investigations are assigned to the county where the CA/N occurred regardless of the victims' current residence.

Note: CI may assign complaints received after-hours to the county where the child victim is located to ensure contact is made.

Foster Child

Refer to [FOM 722-13A, Centralized Intake Responsibilities](#), for guidance regarding complaints of abuse or neglect on a foster child.

ADMINISTRATIVE RULE VIOLATIONS

Division of Child Welfare Licensing (DCWL)

The Division of Child Welfare Licensing (DCWL) is responsible for investigating administrative rule violations occurring in the following regulated child care organizations:

- Child caring institutions (CCI).
- Court operated facilities (COF).
- Child placing agencies (CPA).

Bureau of Community and Health Systems (BCHS)

The Department of Licensing and Regulatory Affairs, Bureau of Community and Health Systems (BCHS) is responsible for

investigating administrative rule violations occurring in the following regulated child care organizations:

- Child (day) care centers.
- Family and group child (day) care homes.
- Camps.

When CI receives complaints solely related to administrative rules involving any of the above, they must transfer these complaints and refer them to the appropriate agency (DCWL or BCHS) within 24 hours of receipt of the complaint. Preliminary Investigations may not be required by CI in order to transfer these complaints.

Note: DCWL and/or BCHS staff are required to file a new complaint of CA/N with (CI) whenever there is a suspicion of CA/N by a person responsible for the child's care.

Notification to CPS-MIC and DCWL/BCHS

When the CPS-MIC complaint involves a child victim placed in foster care, and the complaint is not assigned for investigation or is transferred to licensing, Centralized Intake (CI) will e-mail a notification of the complaint and decision to the director of the county where the child is a ward. If the CPS-MIC complaint is assigned, the CPS-MIC investigator will make that e-mail notification to the director of the county where the child is a ward.

[See FOM 722-13A, Centralized Intake Responsibilities.](#)

Any complaint not assigned for investigation involving a child care institution or child placing agency, including a licensed foster home, will be referred to (DCWL) no later than 24-hours after the complaint is received. Contact the DCWL complaint line at (844) 313-3447. Complaints can be faxed to (517) 373-8570 or emailed to MDHHS-DCWLcomplaints@michigan.gov.

Any complaint not assigned for investigation involving a child care facility/home, camp or adult foster care will be referred to (BCHS) as soon as possible, but no later than 24 hours after the complaint is received. Contact the BCHS complaint line at (866) 856-0126. Complaints can be faxed to (517) 284-9739 or submitted online at http://www.michigan.gov/lara/0,4601,7-154-63294_27723_27777_72411---,00.html. CPS-MIC will be responsible for notifying DCWL/BCHS within 24 hours of assignment.

When CA/N is alleged to have occurred in an unlicensed/unregistered child care facility, CI will refer to BCHS and also send a Law Enforcement Notification (LEN) to the law enforcement agency and prosecuting attorney's office in the jurisdiction where the alleged CA/N occurred.

CI will refer to BCHS and send a law enforcement notification (LEN) to both the law enforcement agency and prosecuting attorney's office covering the jurisdiction where the alleged CA/N occurred; if the CA/N has occurred in unlicensed child care programs not required to be licensed, such as:

- Programs with parents and children residing together on-site.
- Indian tribal programs.
- Enrolled providers.
 - Day care aide (through the Child Development and Care program).
 - Unlicensed Providers (through the Child Development and Care program).

CI will follow the established protocols for contacting CPS-MIC supervisors for all assignments and rejections.

Prosecuting Attorney/Law Enforcement Responsibility

Prosecuting attorney/law enforcement agencies are responsible for the investigation of CA/N by certain individuals and in unregulated institutional settings such as:

- Schools (both public and private), including boarding schools.
- Incidental out-of-home or in-home childcare (baby-sitting).
- Mental health facilities not subject to PA 116.
- Clergy.
- Unregulated (unlicensed or unregistered) childcare group and family homes.

- Persons not responsible for the child's health or welfare.

CPS intake must transfer these complaints and refer to the prosecuting attorney/law enforcement agency within 24 hours of receipt of the complaint.

Additional CPS-MIC Policy

See [PSM 713-08, Special Investigative Situations \(Maltreatment-in-Care\)](#), [PSM 713-09, Completion of Field Investigation](#) and [PSM 716-9, New Complaint When Child is in Foster Care](#), when a CPS-MIC complaint is assigned for investigation.

CONFLICTS OF INTEREST

A CPS complaint, which involves staff from local MDHHS and CPA's, must be transferred to another office, if there is a conflict of interest. If MDHHS staff has professional responsibility in more than one local/district office, the assigned CPS complaint must be referred to a local/district office in which the staff does not have professional responsibility.

Disputes between counties must be referred to the Business Service Centers (BSC) for resolution.

Any case records in hard copy must remain in the local/district office which conducted the investigation. Confidentiality must be maintained. See [PSM 712-8, CPS Intake Completion](#), Confidential Complaint section. If there is a judicial finding of abuse or neglect in the Family Division of Circuit Court, the court findings and the findings of the investigation must be reported to the director of the local office, and to the Business Service Center in which the subject of the report is employed.

DEATH OF A CHILD

A CPS investigation involving child death will occur when allegations meet the definition of suspected child abuse or neglect. A sudden and/or unexpected death of an infant or child is sufficient to investigate.

Document that the complaint is regarding a child death in the intake module (see [PSM 713-01, CPS Investigation - General Instructions and Checklist](#) and [PSM 713-08, Special Investigative Situations](#)). Select that the child is deceased and enter the date and place of

death. The death of a child must be reported as outlined in the [Services Requirements Manual, SRM 172](#).

See [PSM 715-3, Family Court: Petitions, Hearings, and Court Orders](#), Death of a Child Under the Court's Jurisdiction section, if the child who died is under the court's jurisdiction.

DOMESTIC VIOLENCE

Definitions

Domestic violence (DV) is a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks as well as economic coercion that adults or adolescents use against their intimate partners.

Intimate partner includes: spouse or former spouse; current or former living-together partner; individuals who have ever been involved in a dating relationship; have a child in common; or any nonparent adult defined as a person responsible for the health and welfare of the child.

Overview

The primary focus of CPS is the protection of children. In situations where DV is a factor, the preferred approach is to assist the adult victim of DV in the planning for his/her safety and the safety of the child.

Responding to complaints where DV is a factor should include coordination with law enforcement, DV programs, the criminal justice system, the Friend of the Court, Family Division of Circuit Court and intervention programs for batterers. DV often does not end when the relationship between the perpetrator and the victim of DV ends.

Assigning Complaints for CPS Investigation

A CPS complaint in which the only allegation is DV is not a sufficient basis for assigning the complaint for field investigation. To be assigned for investigation, the complaint must also include information indicating the DV has resulted in actual abuse, neglect or threatened harm to the child.

Centralized Intake must conduct a minimum of a preliminary investigation on complaints alleging DV. The preliminary investigation must include attempted contact with law enforcement to determine whether a child has been injured, is at risk of injury, or has been threatened with harm as a result of past or current DV in the home. Issues that may assist in determining whether there is threatened harm in cases involving DV are:

- A weapon was used or threatened to be used in the DV incident.
- An animal has been tortured, deliberately injured or killed by the perpetrator.
- A parent or other adult is found in the home in violation of a child protection court order or personal protection order.
- There are reported behavioral changes in the child (for example, a child's teacher describes that the child used to be an involved and highly functioning student and now is withdrawn, doing poorly in coursework, or acting out with violence).
- Reported increase in frequency or severity of DV.
- Threats of violence against the child.

See the DV sections in [PSM 713-08, Special Investigative Situations](#), and [PSM 714-1, Post Investigative Services](#).

DRIVING UNDER THE INFLUENCE

When Centralized Intake (CI) receives a complaint in which the reporting person alleges a child is at immediate risk because the child is riding in a vehicle with an intoxicated driver, CI must direct the reporting person to contact law enforcement with a description of the vehicle, its last known location, and any other known information, such as the license plate number and identity of the driver.

A complaint from the prosecuting attorney or law enforcement that there is suspicion of child abuse or neglect based on an arrest, prosecution, or conviction of a parent, legal guardian, or any other person responsible for the child's health or welfare for operating a motor vehicle while under the influence with a child in the vehicle, must be assigned for a field investigation.

A minimum of a preliminary investigation must be conducted by CI when a source other than the prosecuting attorney or law enforcement makes a complaint that a parent, legal guardian, or any other person responsible for a child's health or welfare has been arrested, ticketed, or prosecuted for driving under the influence with a child in the car. The preliminary investigation must include one or more of the following:

- Central registry and LEIN check. (The central registry clearance only needs to be done on persons listed on the complaint who are parents, persons responsible, or who are ages 18 or older.)
- If the child is school age, contact the school to determine if there is reason to suspect child abuse/neglect.
- Contact law enforcement to determine if an arrest was made or if a citation was issued.
- Any other collateral contacts necessary, given the circumstances, to determine if an investigation is warranted.

The decision to assign for field investigation must be based on the same criteria as any other complaint of child abuse/neglect.

HEAD LICE

An allegation of neglect based **solely** on a child having head lice is **not** appropriate for CPS investigation. This condition could arise in any number of ways and is not, in and of itself, an indicator of neglect.

INTER-COUNTY COMPLAINTS

CI may receive a complaint that involves a child whose residence is in another county (such as when a child is brought to a hospital located in a county other than the child's residence, or the child is visiting the non-custodial parent). The responsibility for initiating the investigation for these types of complaints depends on the nature of the allegations and the priority response. The county responsible for handling the complaint is as follows:

- The county where the child is found is responsible for the complaint if the priority response for the complaint is Immediate Response (12/24).

- The county of residence is responsible for handling the complaint if the priority response for the complaint is 24 Hour Response and 72 Hour Face-to-Face (24/72), or not appropriate for investigation.

See [PSM 712-4, Intake-Minimal Priority Response Criteria](#), to determine the priority response.

Exception: If the child attends school in an adjacent county, the county of residence should handle the complaint.

The process of handling and assigning complaints depends on the nature of the allegations, the location of all involved individuals, the priority response and the information available to all parties. CI may assign a complaint to a county where the victim does not reside, based upon unique circumstances. If the local office has concerns regarding the assignment, the local office director or his/her designee should contact CI; see [PSM 711-6, Responsibility to Receive and Investigate Complaints](#).

CPS-MIC

Complaints involving children in court-ordered out-of-home placements will be investigated by the CPS-MIC units. When a CPS-MIC complaint involves multiple counties, assign the complaint to the county in which the child-caring institution or foster family home where the alleged abuse or neglect occurred.

INTER-COUNTY DISPUTES AND COORDINATION

Disputes between CI and the assigned county must be immediately referred for resolution to the Business Service Center.

Priority Response is 12/24

If the priority response for the complaint is 12/24, the assigned investigator must immediately speak to a supervisor or designee (a voicemail message is not sufficient) in the county of residence to notify them of the complaint, coordinate the investigation and agree upon each county's responsibilities.

Responsibilities of the county where the child is found (unless otherwise agreed):

- Commence the investigation to ensure the immediate safety of the child.
- Interview all individuals (for example, all victims, caretakers, witnesses, alleged perpetrators, etc.) who may have direct knowledge of the current allegations and are currently in the county where the child is found.
- Document all investigative activities and findings completed by the county where the child is found in MiSACWIS within 5 business days.
- Maintain contact with the county of residence to coordinate investigative activities.
- Transfer the complaint in MiSACWIS to the county of residence when:
 - A petition is filed in the Family Division of Circuit Court in the county where the child is found, the court authorizes the petition, the court transfers case responsibility to the county of the child's residence **and** the court in the county of residence accepts transfer of the case.

Note: If a petition is filed and the court in the county where the child is found authorizes the petition, the complaint must be registered in the county where the child is found, pending transfer.

 - No petition is needed.
 - A petition is filed in the Family Division of Circuit Court in the county where the child is found and the court does not authorize the petition.

Responsibilities of the county of residence (unless otherwise agreed):

- Make efforts to ensure the safety of any other children located in the county of residence.
- Pending case transfer or resolution of court jurisdiction, cooperate with the county (where the child is found) to provide any assistance necessary to ensure the safety of the child (including further interviews, petitioning, etc.).

- Interview all individuals (for example, all victims, caretakers, witnesses, alleged perpetrators) who may have direct knowledge of the current allegations and are currently in the county of residence. Accept transfer of case responsibility when the Family Division of Circuit Court in the county of residence accepts the transfer of a petition, if a petition was filed by the county where the child is found.
- In cases in which the Family Division of Circuit Court is not involved, the county of residence must accept case responsibility when the transfer is initiated by the county where the child is found.
- Accept transfer of the case in MiSACWIS. County of Residence Agrees to Handle the Complaint.

The county of residence can agree to handle the complaint. If the county of residence will be handling the complaint, transfer the complaint in MiSACWIS to the county of residence. The county of residence may request that the county where the child is found take certain actions on the case in order to ensure child safety. These requests must be honored.

Note: When determining whether to request that the county where the child is found to take certain actions on the case, consider the impact the request will have on the continuity of services for the family; see Cases Involving Multiple Counties section in this item.

Priority Response is 24/72

If the priority response for the complaint is 24/72, immediately speak to a supervisor or designee (a voicemail message is not sufficient) in the county of residence to notify them of the complaint. Transfer the complaint in MiSACWIS to the County of Residence.

The county of residence may request that the county where the child is found take certain actions on the case in order to ensure child safety. These requests must be honored.

Note: When determining whether to request that the county where the child is found take certain actions on the case, consider the impact the request will have on the continuity of services for the family; see Cases Involving Multiple Counties section in this item.

All contacts between the workers/supervisors of different counties must be documented in social work contacts by the worker/supervisor initiating the contact.

Summary of Responsibilities of Counties				
Priority Response	Interview Child Found Out-of-County of Residence	Interview Other Children	Interview Parents, Alleged Perpetrators, Etc.	Petition
12/24	County where the child is found.	County of residence.	County where the child is found and county of residence.	County where the child is found.
<ul style="list-style-type: none"> 24/72 12/24 complaints in which the county of residence decides to handle. 	County of residence.	County of residence.	County of residence.	County of residence.

INTERSTATE COMPLAINTS

In the event CI receives a complaint from an out-of-state department involving a Michigan child, the county where the complaint is assigned must proceed with standard procedures for evaluating and investigating complaints of child abuse and neglect (CA/N). Michigan CPS staff may communicate initially by telephone with the referring out-of-state department to obtain necessary information. Michigan CPS staff will then write to the department in the other state confirming the specific responsibilities of each.

CPS complaints to or from another state are not governed by the Interstate Compact on the Placement of Children. Contact may be made directly with the other state department. For contact information for other states, go to http://www.aphsa.org/content/APHSA/en/resources/LINKS/STATE_CONTACTS.html.

**KNOWN
PERPETRATOR
MOVING IN OR
RESIDING WITH A
NEW FAMILY**

CPS must investigate complaints in which there is no new allegation of abuse/neglect, but the complaint alleges **only** that a person convicted of a crime against children in criminal court and/or found to be abusive/neglectful by the Family Division of Circuit Court has moved into or is providing care in a home in which children reside. CPS must determine whether threatened harm to a child exists or whether actual harm has occurred; see [PSM 711-05, Department Responsibilities and Operational Definitions](#) and [PSM 713-08, Special Investigative Situations](#). Probation/parole officers and law enforcement must be contacted to determine their need to know of, or be involved in, the investigation, regardless of the status of the probation/parole (such as open, closed and completed).

**MEDICAL NEGLECT
OF DISABLED
INFANTS AND
MEDICAL NEGLECT
BASED ON
RELIGIOUS BELIEFS**

See [PSM 716-8, Medical Neglect of Disabled Infants & Medical Neglect Based on Religious Beliefs](#), for more information when a complaint is received regarding medical neglect of a disabled infant or medical neglect based on religious beliefs.

MILITARY BASE

Military Base Law, Federal Army Regulation 608-18, prohibits investigation of CPS complaints on military bases, unless a special written agreement exists.

NEWBORNS

If an infant is born to parents who currently have child(ren) in out-of-home care, or who are/were permanent wards as a result of a child abuse/neglect court action, CPS must conduct a full field investigation.

Birth Match

Birth Match is an automated system that notifies CI when a new child is born to a parent who has previously had parental rights terminated in a child protective proceeding, caused the death of a child due to abuse and/or neglect or has been manually added to the match list. See [PSM 713-09, Completion of Investigation](#), Birth Match section for information on when and how to add a perpetrator to the match list.

When a birth match occurs, MiSACWIS automatically generates a complaint as an unassigned complaint and the CI Director receives an email alert that the complaint has been generated. When CI receives the birth match complaint, they must verify that the match is accurate.

Inaccurate Match

If the match is inaccurate (the parent listed in the complaint does not have history with MDHHS), the complaint must be deleted from MiSACWIS. Contact CPS Program Office at Child-Welfare-Policy@michigan.gov to discuss case specifics and to determine if the complaint should be deleted.

Accurate Match

If the match is accurate and there is not an already pending investigation or open case, the complaint must be assigned for investigation. The allegations should be listed as threatened harm of the type of abuse or neglect that led to the parent's name being placed on the birth match list.

If there is a pending investigation or open case, the complaint must be rejected as already investigated. See [PSM 712-7, Rejected Complaints](#). The information included in the birth match, including related history (CPS, FC and/or criminal), must be used to evaluate child safety in the pending investigation or open case.

See [PSM 713-08, Special Investigative Situations](#), for information on investigating these complaints and on threatened harm due to a parent's history of child abuse/neglect, removal of a child, and/or termination of parental rights.

Intent to Adopt

If CPS becomes aware of a **new** child born to parents who currently have a child(ren) in out-of-home care, or is/was a permanent ward

as a result of a child abuse/neglect court action and the parents' intent is to have the **new** child adopted, CPS must conduct a full field investigation. This investigation must include verification of the child's well-being, proof that the adoption process has commenced and verification of the child's placement.

PREGNANCY OF A CHILD LESS THAN 12 YEARS OF AGE

If a complaint alleges the pregnancy of a child less than 12 years of age and it is unknown if the alleged perpetrator is a person responsible for the child's health or welfare, a preliminary investigation must be completed to determine if the alleged perpetrator is a person responsible. If the alleged perpetrator is a person responsible, the complaint must be assigned for investigation. See [PSM 711-6, Responsibility to Receive and Investigate Complaints](#) for clarification on forwarding referrals to other agencies, including law enforcement, when the perpetrator is not a person responsible.

PROPER CUSTODY OR GUARDIANSHIP

Children residing with a relative or an unrelated caregiver who does not have a legal guardianship are not in an abusive/neglectful situation based solely on the living arrangement; see [PSM 713-08, Special Investigative Situations](#).

RUNAWAYS

Routine complaints on runaways are not appropriate for protective services. Running away may indicate questionable parental care, but is not always child abuse or neglect.

Complaints should be evaluated to determine whether there are allegations of abuse/neglect, including human trafficking.

HUMAN TRAFFICKING

The [MDHHS Human Trafficking of Children Protocol](#) was developed to guide caseworkers in assisting children who are victims of human trafficking. The protocol focuses on the needs of victims, with the overriding intention of protecting the interests of children and maintaining their safety in the community. The protocol prescribes:

- A coordinated investigative team approach while minimizing trauma to the victim.
- Protection and the delivery of specialized services to the child victim and appropriate family members.
- Cross-professional training to promote a better understanding of the unique nature and challenges of cases involving child sex trafficking and labor trafficking.
- Alternatives for handling the case after the child has been identified as the victim of human trafficking.

Referral to Law Enforcement

Within 24 hours, CI or CPS must refer a case to a local law enforcement agency if a sex trafficking victim or labor trafficking victim is found.

A local law enforcement agency must make a verbal and written report to CPS Centralized Intake (855-444-3911) whenever a child sex trafficking victim or labor trafficking victim is found.

Policy Contact

Questions about this policy item may be directed to the MDHHS Human Trafficking Analyst:

MDHHS Education and Youth Services Unit
235 S. Grand Ave., Suite 514
Lansing, MI 48933
Office: (517) 335-8909
Fax: (517) 335-7789
Email: [Child Welfare Policy Mailbox](#)

SAFE DELIVERY ACT

Michigan law (MCL 712.1 et. Seq., 750.135, and 722.628) allows a parent(s) to surrender an unharmed newborn up to 72 hours old to an emergency service provider (ESP). An ESP is a uniformed, or otherwise identified, inside-the-premises, on-duty employee, or contractor of a fire department, hospital or police station or a paramedic or an emergency medical technician when responding to a 911 call. If the newborn is unharmed, the ESP should contact MDHHS.

In situations where CPS is contacted by an ESP and there is no evidence of child abuse/neglect, local offices and/or CI should direct the ESP to contact a public or private child-placing agency in that area directly responsible for placing a child in these situations.

The Safe Delivery website has a listing of private adoption agencies that will provide placement for an abandoned newborn. If the newborn meets the criteria of the law (no evidence of child abuse/neglect, less than 72 hours old, and voluntarily surrendered by a parent), CPS must reject the complaint for investigation.

See [NAA 255, Termination of Parental Rights](#), Voluntary Proceedings for Termination of Parental Rights section for American Indian children.

SCHOOL ATTENDANCE AND HOME SCHOOLING

A complaint in which the **only** allegation involves a child failing to attend school and/or alternate educational programming is not sufficient basis for suspecting child neglect, and is inappropriate for investigation by CPS staff. If the complaint is initiated by non-school personnel, the person should be referred to the school district's attendance officer. If the complaint is initiated by school personnel, they are to be informed that this issue falls under the provisions of the Compulsory School Attendance section of the School Code of 1976 (MCL 380.1561-380.1599), not the Child Protection Law.

A complaint of alleged child abuse or neglect that **also** includes an allegation of a child's non-attendance in education programming is appropriate for investigation by CPS. The complaint should also be referred to the school district's attendance officer. The investigation and any subsequent service plan must be coordinated with the school district's attendance officer or other appropriate school staff, as in any other matter in which more than one department/agency has responsibility.

SEXUALLY TRANSMITTED DISEASE

If a complaint alleges that a child less than 12 years of age has been diagnosed with a sexually transmitted disease and it is unknown if the alleged perpetrator is a person responsible for the child's health or welfare, a preliminary investigation must be completed to determine if the alleged perpetrator is a person

responsible. If the alleged perpetrator is a person responsible, the complaint must be assigned for investigation.

SIBLING-ON-SIBLING OR CHILD-ON-CHILD VIOLENCE

CPS must conduct a minimum of a preliminary investigation and evaluate complaints of sibling or child-on-child violence (physical abuse, sexual abuse among siblings or children in the home under the age of 18, etc.) to determine if the parent or other person responsible for the child's health or welfare was neglectful.

If the preliminary investigation determines that the complaint is based **solely** on violence among siblings or children in the home under the age 18 and includes no issue of parental neglect regarding the sibling- on-sibling or child-on-child violence (or other CA/N allegations), reject the complaint and refer it to law enforcement. The referral to law enforcement must be made within 24 hours of CPS receiving the complaint.

See [PSM 713-08, Special Investigative Situations](#), Sibling-on-Sibling Or Child-on-Child Violence section for more information on investigating these complaints. The only way a child may be investigated as an alleged perpetrator of child abuse and/or neglect or be entered on central registry as a perpetrator is if that child is the minor parent of the alleged/identified victim.

SUBSTANCE USE BY CARETAKER

See [PSM 716-7, Substance Use Disorder Cases](#) for information on substance and alcohol exposed infants.

TEENAGERS

Parents and legal guardians are responsible for the health and welfare of their children up until their 18th birthday. CPS is required to protect all children under the age of 18.

Upon receipt of a complaint involving teenagers, evaluate the complaint in the same manner as any other complaint to determine if the allegations meet child abuse and neglect (CA/N) definitions. If the child is under 18, the CA/N definitions are met and the alleged

perpetrator is a person responsible for the health and welfare of the child, the complaint must be assigned for investigation.

VACCINATIONS

The Michigan public health code (MCL 333.9215) provides exceptions to the immunization requirements. CPS does not investigate complaints involving parents who have chosen not to immunize their children.

SPECIAL CASES BEYOND INTAKE

There are many other types of CPS complaints that warrant special handling and consideration. See [PSM 713-08, Special Investigative Situations](#), PSM 716-1 through 716-9, and PSM 715-1 through 715-4, for examples of these types of cases.

LEGAL AUTHORITY

The Preventing Sex Trafficking and Strengthening Families Act, P.L. 113-183

States must develop and implement plans to expeditiously locate any child missing from foster care; determine the primary factors that contribute to the child's running away or being absent from foster care; determine the child's experiences while absent from foster care, including screening whether the child was a victim of sex trafficking. The supervising agency must report within 24 hours of receiving information on missing or abducted children to the law enforcement authorities and the National Center for Missing and Exploited Children.

Trafficking Victims' Protection Act

A sex trafficking victim is defined as an individual subject to the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act or who is a victim of a severe form of trafficking in persons in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induces to perform the act is under 18 years old.

POLICY CONTACT

Questions about this policy item may be directed to the [Child Welfare Policy Mailbox](#).

EXHIBIT 20

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALLISON POMEROY, RYAN C.
POMEROY, and KELSEY N. POMEROY, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

CONSTANCE M. FALING, a/k/a CONNIE
FALING,

Respondent-Appellant,

and

BRIAN FALING,

Respondent.

UNPUBLISHED

March 10, 2000

No. 217536

Jackson Circuit Court

Family Division

LC No. 97-019258-NA

Before: Holbrook, Jr., P.J., and Smolenski and Collins, JJ.

PER CURIAM.

Respondent-appellant Constance M. Faling (“appellant”) appeals as of right from an order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g). We affirm in part and reverse in part.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). This Court reviews the trial court’s findings of fact for clear error. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The family court terminated appellant’s parental rights pursuant to MCL 712A.19b(3)(c)(i) and (g); MSA 27.3178(598.19b)(3)(c)(i) and (g), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Here, the condition leading to the initial adjudication was appellant's educational neglect of her children, which arose from the children's excessive absenteeism from school. Chronic absenteeism is a form of educational neglect. See, e.g., *In re Nash*, 165 Mich App 450, 456; 419 NW2d 1 (1987). Because educational neglect is one statutory ground granting the trial court jurisdiction over minors, MCL 712A.2(b)(1); MSA 27.3178(598.2b)(1), a parent's failure to rectify this condition after an initial dispositional order can result in termination of parental rights. See MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i).

The record shows that all four of appellant's children were removed from appellant's custody in December 1997 on the basis of educational neglect.¹ In July 1998, Allison Pomeroy was returned to appellant's custody. A foster care worker testified that only Allison was returned to appellant because "Allison was seen as the most difficult child for her to handle, and we wanted her to be able to focus attention on Allison." However, on September 16, 1998, because Allison had attended school only twice since the first of that month, the court ordered Allison back into foster care. Given that Allison's chronic absenteeism continued after she was returned to appellant's custody, we find that the family court did not clearly err in finding that MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) was established by clear and convincing evidence with respect to Allison Pomeroy. Because the family court found clear and convincing evidence to support termination of appellant's parental rights as to Allison under MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i), we need not address appellant's contention that the court erred in terminating her rights to Allison pursuant to MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g). Further, appellant has failed to show that termination of her parental rights to Allison was clearly not in Allison's best interests. MCL 712A.19b(5); MSA 23.3178(598.19b)(5); *In re Hall-Smith*, 222 Mich App 470, 472-473; 564 NW2d 156 (1997). Accordingly, we find that the family court did not err in terminating appellant's parental rights as to Allison Pomeroy.

We conclude, however, that the trial court erred in terminating appellant's parental rights as to Ryan Pomeroy and Kelsey Pomeroy. MCL 712A.19b(3)(c)(i); MSA 27.3178(598.19b)(3)(c)(i) was not established by clear and convincing evidence with regard to the two youngest Pomeroy children. Although educational neglect is a ground for granting the circuit court jurisdiction over minors, MCL 712A.2(b)(1); MSA 27.3178(598.2b)(1), once Ryan and Kelsey were removed from appellant's custody, appellant never had the chance to demonstrate that she could get them to school. Appellant testified that the younger children had missed school because of head lice or illness. The court did not express doubts concerning appellant's testimony in this regard. The evidence shows that appellant maintained a clean and safe home and that she has completed parenting classes, attended visits with her children regularly, generally cooperated with case workers, and remained under medical care for her mental illness. To the extent that appellant was given the chance to demonstrate her ability to rectify the conditions that led to the initial adjudication, i.e., educational neglect, it was with Allison alone, the most difficult child. Because appellant had no opportunity after Ryan and Kelsey were removed from her custody to demonstrate an improved ability to get them to school, with or without Allison being in the home, it is premature to conclude that reform is not likely in this regard within a reasonable time. See *In re Newman*, 189 Mich App 61, 68-69; 472 NW2d 38 (1991).

Moreover, MCL 712A.19b(3)(c)(g); MSA 27.3178(598.19b)(3)(c)(g) was not established by clear and convincing evidence with regard to the two youngest children. Although the evidence shows that appellant suffers from a mental illness for which she takes medication, that she sometimes handles anger inappropriately, and that a clinical psychologist found her to be immature, oppositional, verbally aggressive, irresponsible, and manipulative, there were no allegations or evidence of abuse, and it is undisputed that appellant's home was clean and stocked with food. With regard to the evidence of educational neglect, as discussed above, because appellant was not afforded the opportunity, after Ryan and Kelsey were removed from her custody, to show that she could get them to school, it is premature to conclude that she would not be able to do so within a reasonable time.

The family court's order is affirmed with regard to the termination of appellant's parental rights to Allison Pomeroy, and it is reversed with regard to the termination of appellant's parental rights to Ryan Pomeroy and Kelsey Pomeroy.

/s/ Donald E. Holbrook, Jr.

/s/ Jeffrey G. Collins

¹ In accordance with petitioner's position, the trial court did not terminate parental rights as to appellant's eldest child, Beth Marie Pomeroy.

EXHIBIT 21



161 Misc.2d 600, 614 N.Y.S.2d 855

Commissioner of Social Services, on Behalf of Leslie
C. and Another, Children Alleged to be Abused
and Neglected. Maria M. et al., Respondents.

Family Court, Kings County,
94-336
April 29, 1994

CITE TITLE AS: Commissioner
of Social Servs. (Maria M.)

HEADNOTES

[Parent, Child and Family](#)
[Abused or Neglected Child](#)

Abuse Based upon Sexually Active Teenage Daughter's
Pregnancy

(1) Respondent mother cannot be found guilty of child abuse pursuant to Family Court Act § 1012 (e) (iii) merely because she did not take suitable and appropriate measures to “proscribe the sexual relations of her daughter”, who became pregnant when she was 14 years old. Petitioner has failed to prove, by a preponderance of the evidence, that the daughter's 20-year-old boyfriend resided in respondent's home or that he had sex with respondent's daughter there. Any cause of action for abuse under the statute arising out of a teenage pregnancy must be limited to those parents who fail to intervene in forced sexual relationships of which they have personal knowledge. The five- year age discrepancy between the participants herein is not a sufficient basis to impose liability on the parent.

[Parent, Child and Family](#)
[Abused or Neglected Child](#)

Educational Neglect--Inference of “Impairment” Drawn from
Excessive Absences from School

(2) Respondent mother is found guilty of educational neglect (Family Ct Act § 1012 [f] [i]) for failing to secure regular attendance of her two children, now ages 15 and 17, in

school since 1992 in violation of the compulsory attendance law (Education Law § 3205), resulting in “impairment” to the physical, mental or emotional condition of the children. Both children are students in special education, whose learning needs require individualized instruction and the use of specialized techniques. The children's excessive absences from school permit the inference of “impairment” necessary to support a finding of educational neglect under the statute.

TOTAL CLIENT SERVICE LIBRARY REFERENCES

[Am Jur 2d, Infants, § 16.](#)

[Education Law § 3205](#); [Family Ct Act § 1012 \(e\) \(iii\); \(f\) \(i\).](#)

[NY Jur 2d, Domestic Relations, §§1874, 1875, 1878.](#)

ANNOTATION REFERENCES

See ALR Index under Abuse of Persons; Neglect of Child. *601

APPEARANCES OF COUNSEL

Michael D. Carlin, New York City, for Maria M., respondent.
Paul A. Crotty, *Corporation Counsel* of New York City, Brooklyn (*Helene Bernstein* of counsel), for petitioner.
Legal Aid Society, Brooklyn (*Kim Susser* of counsel), *Law Guardian*.



OPINION OF THE COURT





Paula J. Hepner, J.



Three¹ child abuse petitions were filed on March 1, 1993 against respondent Maria M. (respondent M.), the children's mother, and Dominique P., the 20-year-old boyfriend of the 15-year-old subject child, Leslie. The Commissioner of Social Services (hereinafter CSS) charged each respondent with sexual abuse of Leslie C. because the “Respondent mother has allowed Respondent Dominique P. to reside in the family home despite having knowledge that the subject child, Leslie, is having sexual intercourse with the said Respondent in violation of [Penal Law § 130.38](#). The Respondent mother has acknowledged this to the Child Welfare Administration case-worker. In addition, the subject child, Leslie, is pregnant.”² The petition also charged respondent M. with educational neglect and inadequate

supervision and guardianship: (a) for her failure to send the children, Leslie and Ferdinand, to school on a regular and consistent basis; (b) because the child Leslie “has run away in the past and the Respondent mother failed to contact the police to file a report;” and (c) because the Respondent mother “refuses to cooperate with the Child Welfare Administration in their efforts to work with the family in getting the children into school and referrals made.”

¹ On March 11, 1993 the petition filed against respondent M.'s 17-year-old child, Abigail S., was withdrawn after the Commissioner of Social Services learned she has two children, is married and living in Queens.

² This allegation of the petition was amended on September 13, 1993 to allege a violation of  Penal Law § 130.20 instead of  Penal Law § 130.38, and to delete the sentence concerning Leslie's pregnancy.



On June 15, 1993 respondent M. moved to dismiss the petition pursuant to  CPLR 3211 (a) (7) on the grounds that the petition failed to state a cause of action under  sections 1012 *602 and 1013 of the Family Court Act.³ She also moved for dismissal, pursuant to  Family Court Act § 1051 (c), asserting that on the facts presented the aid of the court is not required and, further, that public policy requires dismissal of the petition in the interest of justice. On August 9, 1993, this court reserved decision on the motion believing it would be an abuse of discretion to dismiss the petition against respondent M. without holding a hearing to determine whether any of these children require protection. ( *Matter of Rhonda T.*, 99 AD2d 758 [2d Dept 1984].)

³ On July 15, 1993 Dominique P. moved to dismiss the petition under  CPLR 3211 (a) (8) on the ground that the court lacks jurisdiction over his person since no facts were alleged which would establish that he was a “person legally responsible” for the children as defined in  Family Court Act § 1012 (g). Since the petition failed to allege any facts showing that respondent Dominique P. was a regular member of the household, acting as the functional equivalent of a parent, this court

determined it lacked jurisdiction over his person and granted the motion.


The fact-finding hearing commenced on January 4, 1994 and was continued to March 1, 1994 and March 15, 1994. Respondent M. appeared by counsel but did not appear in person, and the trial proceeded on inquest. Ulku Nouri, social work supervisor for Coney Island Hospital, and Paul Kosowski, caseworker for the Child Welfare Administration (hereinafter CWA), testified on behalf of the Commissioner. The petitioner offered into evidence the following documents: hospital records for Leslie C. pertaining to the delivery of her infant, Santa Maria C.; a Department of Social Services (DSS) 2221 report of suspected child abuse and maltreatment dated February 22, 1993; a DSS 2221 report of suspected child abuse and maltreatment dated December 23, 1992; a letter from Abraham Lincoln High School; a DSS 2221 report of suspected child abuse and maltreatment dated February 25, 1993; school records from Teen Aid High School; and school records from Abraham Lincoln High School.


The Commissioner asks for a finding of abuse against respondent M. because she did not take suitable and appropriate measures to “proscribe the sexual relations of her daughter.” The petitioner contends that respondent M. allowed a sex offense⁴ to be committed against her daughter, Leslie, by *603 permitting the child to sleep and have sex with a 20-year-old man in her home, which culminated in a teenage pregnancy, and that respondent M. took no action to protect Leslie from being sexually abused and exploited by Dominique P.⁵ The petitioner also asks for a finding of educational neglect on behalf of both Ferdinand and Leslie, neither of whom have attended school regularly since 1992. The petitioner argues she need not show actual impairment to the children since education, under the State law, is compulsory and children are required by law to go to school.

⁴  Penal Law § 130.20 provides that “[a] person is guilty of sexual misconduct when: 1. Being a male, he engages in sexual intercourse with a female without her consent.” Under  Penal Law § 130.05 (3) (a), “[a] person is deemed incapable of consent when he is ... less than seventeen years old.” Sexual misconduct is a class A misdemeanor.

⁵ The Commissioner argues respondent M. should have pressed charges against Dominique P. for

statutory rape and any other crimes he may have committed by having sexual relations with Leslie. A careful reading of the Penal Law, nonetheless, reveals that no charges for any of the statutory rape crimes could be filed because of the ages of the participants. Similarly, the facts do not support charges for the crimes of sexual abuse.

Respondent M. moves to dismiss the educational neglect allegations on the ground that there was no showing of impairment to the children. The respondent argues the children, now ages 15 and 17, voluntarily chose not to attend school and she should not be liable for their conduct at this point in their lives, particularly when CSS was unable to secure their regular attendance upon instruction when they were remanded to the Commissioner's care. Notwithstanding the presumption of incapacity set forth in  Penal Law § 130.05 (3) (a), respondent M. also seeks dismissal of the abuse allegations because there was no proof offered to establish that Leslie, who is a sexually active teenager, did not consent to the sexual conduct at issue.


The Law Guardian takes the position that the educational neglect allegations must be dismissed in the absence of any proof of impairment. Furthermore, she argues that the caseworker did all he could to help remedy the problem and the family members were uncooperative. The Law Guardian also moves to dismiss the sex abuse allegations on the ground that the petitioner failed to establish a connection between Dominique P.'s residence in the home and Leslie's pregnancy. That Leslie was found to have gonorrhea, chlamydia and trichomonas, she contends, does not support a finding of sex abuse in cases involving sexually active teenagers. The Law Guardian asks for dismissal of the petition pursuant to  Family Court Act § 1051 (c) since the aid of the court is not required. Decision was reserved in order to give the court time to review the testimonial and documentary evidence in the record *604 and to consider the points and authorities raised by counsel in their summations.

FINDINGS OF FACT

Having had the unique opportunity to see, hear and assess the witnesses, and to review the documents admitted into evidence, the court makes the following findings of fact based upon the material, relevant, credible and competent evidence in the record:

1. Leslie C. was born on September 8, 1978 and Ferdinand C. was born on February 8, 1977. They reside with respondent M.

2. CSS became involved with the family after receiving a report of suspected child abuse and maltreatment (DSS 2221) in July 1992. Even though the allegations of the original DSS 2221 were “unfounded,”⁶ the caseworker continued working with the family from September 1992 to February 1993 to get respondent M. to make appointments and attend meetings with the Committee on Special Education so that Ferdinand could be reenrolled in school.⁷ Respondent M. was uncooperative, saying either she did not feel well or she could not take off from work to do these things.

⁶  Social Services Law § 412 (11) defines a report as unfounded when an investigation is unable to determine “that some credible evidence of the alleged abuse or maltreatment exists.”

⁷ Ferdinand, who had been in placement as a result of a PINS petition, was released to respondent M. during the summer of 1992.

3. Another report of suspected child abuse or maltreatment was received by CSS on December 23, 1992. The report was made by Ferdinand and concerned his sister, Leslie, who had been missing from the home since some time after November 19, 1992. Respondent M. did not search for Leslie or make any attempts to find out where she was. However, Leslie did call and speak to respondent M. on the telephone during the time she was “missing.” Leslie returned to the home on December 25, 1992. While Leslie was away from the home, she was staying with her boyfriend. When she returned to the home, she was four months pregnant.

4. In February 1993, CSS received a third DSS 2221 report of suspected child abuse or maltreatment concerning Leslie's absence from school.

5. School records in evidence for the child Leslie show that she is diagnosed as “learning disabled” and attends a resource *605 room program with counselling as a related service. In June 1992 she was promoted from seventh to eighth grade. She attended 144 days during the 1991-1992 school year and was absent 37 days. Records in evidence establish that Leslie attended one day from September 1992 to February 1993 and was absent 87 days. In March 1993 the school records in evidence show that Leslie was transferred to Teen

Aid at Abraham Lincoln High School. From March 1993 to June 1993 Leslie attended 16 days of school and was absent 61 days. After making one attempt to reach the family on September 23, 1993, the school discharged Leslie from Teen Aid High School on October 1, 1993 because she had not attended when school resumed in September 1993. Other than the fact of her pregnancy, no medical or other justification was offered by respondent M. for any of Leslie's absences from school.

6. On February 22, 1993, CSS received a fourth DSS-2221 report of suspected child abuse or maltreatment from Coney Island Hospital concerning Leslie and respondent M.'s lack of supervision and educational neglect of Leslie as well as the alleged sexual abuse.

7. When confronted about her 14-year-old daughter's pregnancy, respondent M. responded that Leslie is a woman. Respondent M. did not press criminal charges against Dominique P., stating he would marry her daughter. Dominique P.'s birth date (Jan. 24, 1973) and his exact age were established through hearsay.


8. The child's statements to the social worker at the hospital are uncorroborated. Leslie told Ms. Nouri she has been sexually active since age 13 and has had five partners including Dominique P. She told Ms. Nouri Dominique P. lived in respondent M.'s home from December 25, 1992 until May 1993 and that she had sex with him in her home. Respondent M. denied both of these statements.


9. Prior to the filing of the petition, Leslie stated Dominique P. was the father of her child. After the petition was filed she denied it. Whether Dominique P. acknowledged to the hospital social worker or the caseworker from the Child Welfare Administration that he was the father of the baby is hearsay. When Dominique P. appeared in court, he did not ask the court to adjudicate him the father of Leslie's baby.



10. Medical records in evidence show that Leslie had three or four prenatal visits to Coney Island Hospital between February 22, 1993 and May 14, 1993. Leslie was admitted to *606 the hospital on May 16, 1993 to deliver her baby at full term. Cultures were taken for three sexually transmitted diseases: trichomonas, gonorrhea, and chlamydia, and the result on each was positive.

CONCLUSIONS OF LAW

ABUSE BY RESPONDENT M.

 **Family Court Act § 1046 (b) (i)** requires that in a fact-finding hearing, any determination that a child is an abused or neglected child must be based on a preponderance of the evidence. (*Matter of Tammie Z.*, 66 NY2d 1, 3 [1985].) This quantum of evidence is required in abuse cases as well as neglect cases. (*Matter of Katrina W.*, 171 AD2d 250 [2d Dept 1991]; *Matter of N. & G. Children*, 176 AD2d 504 [1st Dept 1991].)

 **Family Court Act § 1012 (e) (iii)** defines an abused child as a child under the age of 18 years, whose parent or other person legally responsible for the child's care, "commits, or allows to be committed, a sex offense against such child, as defined in the penal law." The abuse charges against respondent M. are based on allegations that she allowed Dominique P. to commit a sex offense against Leslie by allowing him to have sexual intercourse with her daughter in her home and become pregnant by him.

(1) Under  **Family Court Act § 1046 (a) (vi)** statements of the child pertaining to any "allegations of abuse or neglect shall be admissible in evidence, but if uncorroborated, such statements shall not be sufficient to make a fact-finding of abuse or neglect." The court may find the corroboration in "[a]ny other evidence tending to support the reliability" of the child's statements ( **Family Ct Act § 1046 [a] [vi]**). On the record before this court, the petitioner has proven by a preponderance of the evidence that Leslie is sexually active and became pregnant at 14 years of age. The petitioner has not proven, by a preponderance of the evidence, that Dominique P. is the baby's father or that by his actions he has accepted the rights and obligations of parenthood. The petitioner has not proven, by a preponderance of the evidence, that Dominique P. resided in Leslie's home or that he had sex with her there. If an abuse finding were to be made against respondent M., it would be because of her daughter's teenage pregnancy.


A case similar to the instant matter was decided by the Third Department. *607 In *Matter of Toni D.* (179 AD2d 910, 911 [3d Dept 1992]), the Department of Social Services learned, during its investigation of a report of educational neglect, that Toni D. "slept with Scott in his bed nightly and had sexual [relations] with him on May 8, 1990." Toni D. was a 13-year-old teenager and Scott was a 23-year-old man. A neglect petition was filed against Toni D.'s parents alleging they "individually and severally have encouraged and facilitated

this relationship between their daughter ... and ... [Scott] with full knowledge that the two were engaged in a sexual relationship' ... they refused to not permit further contact between Toni and Scott after being advised to do so by law enforcement and social services personnel on May 11, 1990." (*Supra*, at 911.) The Family Court dismissed the petition after trial and the Appellate Division affirmed, holding that the evidence was insufficient to show that the respondents knew their daughter was having a sexual relationship with Scott and found the evidence insufficient to show that they failed to prevent further contact between them once being advised of the relationship.

In New York, the power of the State to intervene in the family is permitted under [Family Court Act § 1011](#) to the limited extent necessary "to help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being." The purpose of the Family Court Act is subverted when it is used to impose particular moral or religious values under the pretext of "child protection." In New York City, 13,999 babies were born to teenage mothers during 1991. Thirty-seven percent (5,186) of those babies were born to mothers between the ages of 15 and 17, and 3% (365) of those babies were born to mothers under the age of 15.⁸ In New York State, pregnancies among teenagers ages 15 to 19 have increased 25% between the years 1980 to 1990, and 80% of teen mothers, in 1990, were unmarried.⁹ What distinguishes this pregnant teen from the 5,000 others in New York City, and if the statute is interpreted as the Commissioner of Social Services urges, should petitions not be filed on the remainder?

⁸ New York City Department of Health, Bureau of Vital Statistics, Bureau of Maternity Services and Family Planning (Dec. 29, 1992).

⁹ United States Department of Commerce, Bureau of the Census, 1990 Census of Population and Housing, Summary Tape Files 1.

This court recognizes there are sound social policy reasons underlying the public policy of discouraging sexual intercourse among unwed females under the age of 17. Certain *608 consequences, such as premature parenthood, forced marriage, single motherhood, adoption, abortion, and the need for medical or psychological treatment, must invariably be faced when children bear children. ( *People v Dozier*, 72 AD2d 478, 483 [1st Dept 1980].) A 1990 report on teenage parents and their children identifies these additional


consequences: the serious risk of becoming a high school dropout, long-term welfare dependency, chronic un- and under-employment, and the perpetuation of intergenerational poverty.¹⁰ For these reasons, the statutory rape laws (*People v Whidden*, 51 NY2d 457 [1980])¹¹ and the age of consent (*People v Dozier*, *supra*) have been upheld, and the perpetrators continue to be punished for their behavior.¹² To suggest that parents should similarly incur legal liability for the sexual activities of their children, however, fails to take into account the reality that the degree of supervision a parent is able to exert diminishes as a child's freedom, independence, age, and privacy increase. In addition, it fails to recognize that the nature of parental supervision is frequently determined by the age of the parent, by culture, by religion, and by the child's gender. Moreover, the imposition of legal liability presupposes that premature sexual activity occurs only in children whose parents do not teach proper moral values or offer role models consistent with that teaching, and fails, as well, to reflect an awareness that teenage pregnancies are the product of behaviors ranging from experimentation to outright defiance of parental authority. *609

¹⁰ Citizens Committee for Children and the Franklin and Eleanor Roosevelt Institute, For a Better LYFE-A Study of School Based Day Care and Support Services' Program for Teenaged Parents and their Children, New York: 1990.

¹¹ Judge Meyer, in the dissent in *People v Whidden* (*supra*, at 463), recognized the inconsistency in the majority's decision upholding the validity of the statutory rape statutes on public policy grounds when pregnancies can result from sexual activity among teenagers which is not proscribed. The affirmative defense to sexual abuse in the third degree ([Penal Law § 130.55](#)) allows teenagers over the age of 14 and less than the age of 17 to engage in sexual relations with a person less than five years older than themselves. Clearly these acts can also result in pregnancies, but a similar legislative concern for the well-being of young mothers is curiously absent from the reasoning underlying this "heavy necking" defense. (Donnino, Practice Commentaries, McKinney's Cons Laws of NY, Book 39, Penal Law art 130, at 571.)

¹² There are no facts in this record to suggest the relationship between Dominique P. and Leslie C. was anything but unforced experimentation.



For this reason, Leslie is unlikely to testify against Dominique P., and a criminal proceeding is unlikely to result in conviction, notwithstanding the child's age.

Assuming  [section 1012 \(e\) \(iii\)](#) creates a cause of action for abuse against parents whose teenage daughters are sexually active and become pregnant, was it also the intent of the Legislature to prosecute the parents of their male teenage partners? Would such an interpretation require mandated reporters to notify the State Central Registry of all pregnant teenagers, or those whom they have reasonable cause to believe are pregnant, who come before them in their professional or official capacities?¹³ Teenagers become pregnant when in the care of their parents as well as in the care and custody of Departments of Social Services, often as a consequence of “[the] practice of placing unrelated teenagers of different sexes in the same [foster] home.” (*Matter of C.*, 160 Misc 2d 151, 154 [Fam Ct, NY County].) Would not this same “legislative intent” bring within its reach the Commissioner as well?

13

 [Social Services Law § 413.](#)


If the statute is interpreted as broadly as the Commissioner asks this court to do, what must a parent do to avoid becoming a respondent in a child abuse proceeding? Faced with the reality of a sexually active teenager, now pregnant, a reasonable parent might elect to maintain the young couple in the home under his/her watchful eye. The alternative response, expression of vociferous disapproval, could provoke the child into running away from home to live in the streets or with a sex partner in circumstances unknown to the parent.

Of relevance to this court's interpretation of the scope of  [Family Court Act § 1012 \(e\) \(iii\)](#) is the enactment of  [section 15 \(3\) of the Domestic Relations Law](#) which empowers this court to give written approval to marry to a person less than 16 years of age.¹⁴ Historically, these petitions have been occasioned by a pregnancy and the family's desire to avoid the shame of an out-of-wedlock child. Surely the Legislature did not intend to give the Commissioner grounds to commence an abuse proceeding against a parent who petitions the court for such an order and who consents to the marriage.


14

The Domestic Relations Law authorizes sexual intercourse within the confines of marriage by persons less than 16. This would suggest, then, that the State's real interest in proscribing teenage sexuality is prompted by moral and economic considerations, rather than a concern for a teenage mother's physical and emotional well-being.




This court believes any cause of action for abuse under


 [Family Court Act § 1012 \(e\) \(iii\)](#) arising out of a teenage *610 pregnancy must be limited to those parents who fail to intervene in forced sexual relationships of which they have personal knowledge. The sanctions in the Penal Law become more severe as the age disparity of the participants increases. If article 10 is to be used to prosecute parents of pregnant teenagers, a similar analysis might be useful in coming to a determination of whether, on different facts, an abuse finding should be made. The five-year age discrepancy between the participants in this case is not, in this court's view, a sufficient basis to impose liability on the parent.¹⁵

15

A neglected child is defined in  [Family Court Act § 1012 \(f\) \(i\)](#) as a “child less than eighteen years of age ... whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent ... to exercise a minimum degree of care ... (B) in providing the child with proper supervision or guardianship.” It has been held that the definition of neglect is “sufficiently elastic to embrace the situation[s] 'in which a parent' allows ‘the child to be impaired.’” (*Matter of Scott G.*, 124 AD2d 928, 929 [3d Dept 1986].) In these situations, the trier of fact must determine “whether a reasonable and prudent parent would have acted, or failed to act.” (*Supra*; see also, *Matter of New York City Dept. of Social Servs. [Anna Marie A.] v Elena A.*, 194 AD2d 608 [2d Dept 1993].) For the reasons set forth above, the petitioner has failed to demonstrate that respondent M. did not exercise a *minimum degree of care* with respect to her child Leslie, or that she did not act as a reasonable and prudent parent. Therefore, the court declines to make a finding of neglect against respondent M. based on inadequate supervision and guardianship.


NEGLECT BY RESPONDENT M.


Article 65 of the  Education Law, section 3205 (1) (a), requires “each minor from six to sixteen years of age” to attend full-time instruction in school. The purpose of the State's compulsory education law “is to ensure that 'children are not left in ignorance, that from some source they will receive instruction that will fit them for their place in society.'” (*Matter of Andrew TT.*, 122 AD2d 362, 364 [3d Dept 1986].)  Section 3205 (3) of the Education Law grants to cities of a certain size the power to “require minors from sixteen to seventeen years of age who are not employed to attend upon full-time day instruction.” The Chancellor of the Board of Education in New York City, being a City described in  section 3205 (3), has promulgated Rule A-201 making full-time attendance compulsory for unemployed minors through age 17.

Under  section 1012 (f) (i) of the Family Court Act, a “neglected child” is defined as “a child less than eighteen years of age ... whose physical, mental or emotional condition has *611 been impaired or is in imminent danger of becoming impaired as a result of the failure of [the] parent ... to exercise a minimum degree of care (A) in supplying the child with adequate ... education in accordance with the provisions of part one of article sixty-five of the education law ... or ... in providing the child with proper supervision or guardianship.” The elements of a cause of action for educational neglect are twofold. First, there must be a showing that the child did not regularly attend school and second, there must be a showing that the child has suffered impairment, or is likely to suffer impairment, as a consequence of the parent's acts or omissions. Once such proof is established, the burden shifts to the parent to offer evidence showing the minor is “attending school and receiving the required instruction in another place” (*Matter of Christa H.*, 127 AD2d 997 [4th Dept 1987]), or that there is a reasonable justification for the child's absences (*Matter of Jennifer N.*, 173 AD2d 971 [3d Dept 1991] [medically excused]).


The case law interpreting article 10 as it relates to educational neglect does not support the Commissioner's contention that “impairment” may be inferred from the sheer absence of a child from school. To the contrary, parents who provide their children with private schooling or adequate home instruction (*Matter of Andrew TT.*, *supra*), or who arrange home tutoring (*Matter of Iesha J.*, 183 AD2d 573 [1st Dept 1992]), will not be found neglectful. For this reason, the statute requires proof that the parent is not providing “minimum care and


that, as a result, the physical, mental or emotional condition of the child has been impaired.” (*Matter of Shelley Renea K.*, 79 AD2d 1073 [3d Dept 1981].) The Third Department has held that even when a child's absences are unexcused, it is the petitioner's burden to show that the absences had an “adverse impact upon the child's education.” (*Supra*, at 1074 [13 unexcused absences and tardy a number of other times]; *Matter of Jennifer N.*, *supra* [nine absences in a month]; *Matter of Jessica Y.*, 161 AD2d 368 [1st Dept 1990].) Only when the number of absences reaches the extreme and continues for an extended time without parental action may the court draw an inference of impairment. In *Matter of Jovann B.* (153 AD2d 858 [2d Dept 1989]), the Second Department drew an inference of imminent danger where an eight-year-old special education student missed 49 days of school in 1984 to 1985, 64 days of school in 1985 to 1986, and missed the entire month of September 1986. Both Leslie and Ferdinand *612 have missed an excessive amount of school which enables this court to draw the inference of impairment permitted in *Jovann B.*

(2) The primary neglect charges against respondent M. are based upon her failure to secure the regular attendance of her children upon instruction in violation of  Education Law § 3205. The facts show she did nothing to facilitate Ferdinand's reenrollment and acquiesced in Leslie's absence, attributing that child's nonattendance to her pregnancy without providing any medical documentation showing a physical inability to go to school. Both of respondent M.'s children are students in special education, whose learning needs require individualized instruction and the use of specialized techniques.¹⁶ Children in special education, who miss school frequently, lose more than just sequential educational information. These children also lose the daily behavioral modification and/or reinforcements incident to their learning. Moreover, Leslie was enrolled in a specialized school program designed for pregnant teens and the instruction she would have received could have benefitted her as a new mother. Ferdinand is emotionally disturbed and his absence from school has deprived him of a chance to develop the coping and management skills he needs to succeed in future employment.

¹⁶ As students with learning difficulties, Leslie and Ferdinand are entitled to receive instruction in special education until the age of 21, under  section 4401 (1) of the Education Law.

DECISION

Because this court does not believe  [Family Court Act § 1012 \(e\) \(iii\)](#) creates a cause of action against parents for abuse when their teenage daughters became pregnant through unforced sexual relations between peers, respondent M.'s outstanding motion to dismiss the abuse allegations is granted. Because respondent M. failed to secure the regular attendance of Leslie and Ferdinand in school, a finding of educational neglect is made. Ferdinand was on remand to

the Commissioner and in placement at the conclusion of the hearing. Whether the proceeding should be dismissed in its entirety, pursuant to  [Family Court Act § 1051 \(c\)](#), must await a dispositional hearing, at which time the current status of the case will be made known to the court. CSS is directed to prepare an investigation and report. The matter is adjourned to June 14, 1994 for disposition. *613

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EXHIBIT 22



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28 A.D.3d 810, 812 N.Y.S.2d

706, 2006 N.Y. Slip Op. 02583

****1** In the Matter of Benjamin K. and
Another, Children Alleged to be Neglected.
Tioga County Department of Social
Services, Respondent; Suellen L., Appellant.

Supreme Court, Appellate Division,
Third Department, New York

96639

April 6, 2006

CITE TITLE AS: Matter of Benjamin K.

HEADNOTES

Parent, Child and Family
Abused or Neglected Child
Educational Neglect

Evidence, compounded by daughter's failing grades, supported determination of educational neglect—respondent's daughter was absent 30 days and tardy 89 days during school year; respondent failed to take any action to remedy this problem and failed to return 38 of 40 phone calls from school's attendance officer; respondent also refused numerous offers of help and, while there was some testimony that daughter had made progress since her PINS adjudication, her attendance continued to be poor.

Parent, Child and Family
Abused or Neglected Child
Inadequate Supervision

Finding of inadequate supervision was amply supported by evidence—there was testimony concerning circumstances which led to respondent's son's juvenile delinquency adjudication and respondent's minimal supervision of him ***811** when he was 9 and 10 years old; his behavior, during those unsupervised times, resulted in him being banned

from community pool for two summers; respondent also exhibited hostile behavior towards school when it contacted her regarding her son's behavior; this resistance, coupled with her failure to respond both to phone calls and requests for medical and psychological exams, resulted in his placement in special education program; children were left unsupervised at home while respondent frequented bar and they were seen roaming streets after village curfew.

Peters, J. Appeal from an order of the Family Court of Tioga County (Argetsinger, J.), entered August 13, 2004, which granted petitioner's application, in a proceeding pursuant to Family Ct Act article 10, to adjudicate respondent's children to be neglected.

In November 2002, petitioner filed a neglect petition alleging respondent's educational neglect of her daughter (born in 1988) which was withdrawn, without prejudice, after respondent agreed to file a person in need of supervision (hereinafter PINS) petition against her daughter. In May 2003, petitioner filed another petition, alleging educational neglect with regard to the daughter and inadequate supervision with regard to both the daughter and respondent's son (born in 1991). Following a fact-finding hearing, Family Court found, by a preponderance of the evidence, that respondent neglected her children. Both the son and the daughter were temporarily placed outside of respondent's home. Respondent appeals.

We note, preliminarily, that with the first petition withdrawn without prejudice there was no bar to the commencement of this proceeding. While the second petition was based upon ****2** new allegations which arose thereafter, there was no error in Family Court's consideration of facts which were originally alleged. Moreover, although disposition in this proceeding has already expired by its own terms, this appeal is not moot since a finding of neglect could be used against respondent in the future (*see Matter of Karissa NN.*, 19 AD3d 766, 766 n [2005]; *Matter of Paul U.*, 12 AD3d 969, 970 n [2004]).



Addressing the finding of neglect, [Family Ct Act § 1012 \(f\)](#) defines a neglected child as one “whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his [or her] parent . . . to exercise a minimum degree of care . . . in supplying the child with adequate . . . education . . . [or] proper supervision” ([Family Ct Act § 1012 \[f\] \[i\]](#))

[A], [B]). To establish an affirmative finding of educational neglect, it must be demonstrated that there is a “significant, unexcused absentee rate that has a detrimental effect on the child's education” (*Matter of Ember R.*, 285 AD2d 757, 758 [2001], *lv denied* 97 NY2d 604 [2001]; see *Matter of Jennifer N.*, 173 AD2d 971, 972 [1991]). *812 And, when the number of absences are “extreme and continues for an extended time without parental action” (*Commissioner of Social Servs. [Maria M.]*, 161 Misc 2d 600, 611 [1994]), an inference of impairment may be drawn.

Here, the daughter was absent 30 days and tardy 89 days during the 2002-2003 school year. Respondent failed to take any action to remedy this problem and failed to return 38 of the 40 phone calls from the school's attendance officer. Respondent also refused numerous offers of help and, while there was some testimony that the daughter had made progress since her PINS adjudication in May 2003, her attendance continued to be poor. This evidence, compounded by the daughter's failing grades, supports Family Court's determination of educational neglect concerning this child.

The finding of inadequate supervision was also amply supported. There was testimony concerning the circumstances which led to the son's juvenile delinquency adjudication in July 2003 and respondent's minimal supervision of him when he was 9 and 10 years old. His behavior, during those unsupervised times, resulted in him being banned from a community pool for two summers. Respondent also exhibited hostile behavior towards the school when it contacted her regarding her son's behavior.

This resistance, coupled with her failure to respond both to the phone calls and requests for medical and psychological exams, resulted in his placement in a special education program. Testimony also revealed that the children were left unsupervised at home while respondent frequented a bar and that they were seen roaming the streets after the village curfew. Hence, where, as here, there is a substantial basis in the record to support Family Court's determination that both children were in imminent danger of becoming impaired as a result of respondent's failure to exercise a minimum degree of care in providing them with adequate supervision (see *Matter of Senator NN.*, 11 AD3d 771, 772 [2004]), the finding of neglect will remain undisturbed.

We next address respondent's challenge to  County Law § 722 only insofar as it implicates her right to the effective assistance of counsel. “[C]areful to distinguish between true ineffectiveness and losing tactics or unsuccessful efforts in advancing appropriate defenses” (*People v Stultz*, 2 NY3d 277, 283 [2004]), our review of the evidence, the law and the circumstances of this case, in their totality at the time of representation, reveals no constitutional infraction (see  *People v Benevento*, 91 NY2d 708, 712 [1998]; see also *Matter of Amanda M.*, 28 AD3d 813 [2006]). **3 *813

Mercure, J.P., Crew III, Rose and Kane, JJ., concur. Ordered that the order is affirmed, without costs.

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EXHIBIT 23



173 A.D.2d 971, 569 N.Y.S.2d 480

In the Matter of Jennifer N., Alleged to be a
Neglected Child. Madison County Department of
Social Services, Respondent; Janine O., Appellant.

Supreme Court, Appellate Division,
Third Department, New York
60486
(May 9, 1991)

CITE TITLE AS: Matter of Jennifer N.

HEADNOTE

**PARENT, CHILD AND FAMILY
ABUSED OR NEGLECTED CHILD**

(1) Order which granted petition to adjudicate respondent's child to be neglected reversed --- Petitioner commenced proceeding alleging respondent had neglected her then 13-year-old daughter by leaving her at Police Department with letter requesting that 'system' care for her; child was then placed in foster care for some five months; Family Court then ordered that she be returned to respondent pending further proceedings; thereafter, amended petition was filed wherein it was alleged respondent failed to provide child with education by keeping her out of school for nine days in one month --- Statute defining 'neglected child' (Family Ct Act § 1012 [f]) contemplates showing of both parental misconduct and harm or potential harm to child --- Although respondent wrote letter to child's principal indicating child would be kept out of school for reasons unrelated to her health, record demonstrates child was under doctor's care during relevant time period and was returned to school as soon as respondent obtained approval from child's physician; furthermore, because there was no proof that unexcused absences had adverse impact upon child's education, there has been no demonstration of impairment or imminent danger of impairment; accordingly, petitioner failed to meet its burden of establishing elements of educational neglect --- Similarly, petitioner has failed to demonstrate how respondent's act of dropping child off at police station impaired her physical, mental or emotional condition; while episode was stressful and upsetting, emotional problems experienced by child

following occurrence were no different in scope or magnitude from troubles she was already having.

Mercure, J.

Appeal from an order of the Family Court of Madison County (O'Brien III, J.), entered February 6, 1990, which granted petitioner's application, in a proceeding pursuant to Family Court Act article 10, to adjudicate respondent's child to be neglected.

On November 15, 1988, petitioner commenced this proceeding alleging that respondent had neglected her then 13-year-old daughter, Jennifer N., by leaving her at the City of Oneida Police Department in Madison County with a letter requesting that the "system" care for her. * Following that incident, Jennifer was placed in foster care until April 1989, at which time Family Court ordered that she be returned to respondent pending further proceedings. Thereafter, on May 24, 1989, an amended petition was filed wherein it was alleged, *inter alia*, that respondent failed to provide Jennifer with education by keeping her out of school for nine days that month. Following a fact-finding hearing, Family Court concluded that there was *972 evidence of educational neglect during May 1989 and that, by leaving Jennifer at the police station, respondent was guilty of "neglect per se". Family Court also found an impairment of Jennifer's physical, mental and emotional condition. Following a dispositional hearing, Family Court determined that Jennifer should remain in foster care for an additional 12 months. Respondent now appeals.

* Respondent has at various times offered a variety of reasons for her action, including that her daughter was terrified about spending the upcoming holidays with her father and that respondent had not been receiving child support for Jennifer.

Family Court Act § 1012 (f) defines a "neglected child", in relevant part, as "a child less than eighteen years of age (i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent ... to exercise a minimum degree of care (A) in supplying the child with adequate food, clothing, shelter or education ... or medical ... care, though financially able to do so ... or (B) in providing the child with proper supervision". The statute contemplates a

“showing of both parental misconduct *and* harm or potential harm to the child” (*Matter of Daniel DD.*, 142 AD2d 750, 751 [emphasis supplied]) by a preponderance of the credible evidence (Family Ct Act § 1046 [b] [i]; *see, Matter of Tammie Z.*, 66 NY2d 1, 3). Thus, while actual physical injury is not necessary to support a finding of neglect (*see, Matter of Danielle M.*, 151 AD2d 240, 242; *Matter of Maroney v Perales*, 102 AD2d 487, 489), petitioner “must demonstrate a causal connection between the conduct of the parent and the alleged harm to the child” (*Matter of Stefanel Tysha C.*, 157 AD2d 322, 327; *see, Matter of William EE.*, 157 AD2d 974, 976; *Matter of Coleen P.*, 148 AD2d 782, 784; *Matter of Susan B.*, 102 AD2d 938, 939).

Turning to the allegations of educational neglect, although respondent did write a letter to Jennifer's principal indicating that Jennifer would be kept out of school for reasons unrelated to her health, the record demonstrates that Jennifer was under a doctor's care during the relevant time period and was returned to school as soon as respondent obtained approval from Jennifer's physician. Furthermore, because “[t]here [was] absolutely no proof that [any] unexcused absences ... had any adverse impact upon the child's education”, there has been no demonstration of impairment or imminent danger of impairment (*Matter of Shelley Renea K.*, 79 AD2d 1073, 1074; *see, Matter of Jessica Y.*, 161 AD2d 368). Accordingly, petitioner failed to meet its burden of establishing the elements of educational neglect.

Similarly, petitioner has failed to demonstrate how respondent's act of dropping Jennifer off at the police station

impaired *973 her physical, mental or emotional condition. Maxine Block, the psychologist who treated Jennifer before this incident, testified that Jennifer did not seem to be much different after the occurrence than she had been before. Additionally, Fred Naugle, who performed a court-ordered mental health evaluation of Jennifer and her parents in April 1989, “would not say that ... any of the problems that [he] saw in Jennifer ... stemmed directly from that particular incident”. Clearly, the episode was stressful and upsetting, but given all the evidence that the emotional problems experienced by Jennifer following the occurrence were no different in scope or magnitude from the troubles she was already having, we conclude that Family Court's order must be reversed and the petition dismissed (*see, Matter of William EE.*, *supra*, at 976; *Matter of Coleen P.*, *supra*, at 784; *Matter of Susan B.*, *supra*, at 939).

As a final note, our decision should not be read as condoning respondent's short-sighted and ill-advised decision to leave Jennifer at the police station. Rather, the dismissal of this proceeding is predicated solely upon petitioner's failure to demonstrate that respondent's conduct impaired Jennifer's physical, mental or emotional well-being.

Order reversed, on the law, without costs, and petition dismissed.

Weiss, J. P., Yesawich, Jr., Levine, Mercure and Harvey, JJ., concur.

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EXHIBIT 24



79 A.D.2d 1073, 436 N.Y.S.2d 99

In the Matter of Shelley Renea K., a Child Alleged to
be Neglected. Otsego County Department of Social
Services, Respondent; Anna Marie K., Appellant

Supreme Court, Appellate Division,
Third Department, New York
38012

January 29, 1981

CITE TITLE AS: Matter of Shelley Renea K.

Appeal from an order of the Family Court of Otsego County, entered March 28, 1980, which placed respondent's child in foster care upon a finding that the child was neglected. Following a hearing, the Family Court found that respondent's daughter was a neglected child based upon proof of some 13 unexcused absences from school during the period November, 1978 through June, 1979 and upon proof that she was tardy a number of other times, that she had appeared in school dirty and without shoes on one occasion and that on many occasions the child had made a telephone call to relatives after school to find out where she should go. The respondent contends that this proof is insufficient to support a finding of neglect. We agree. [Subdivision \(f\) of section 1012 of the Family Court Act](#) defines "Neglected child", in pertinent part, as one "(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care (A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of ... the education law". The statute requires a finding that the parent is not providing minimum care *and* that, as a result, the physical, mental or emotional condition of the child has been impaired or is in imminent danger of becoming impaired (cf. [Matter of Daryl R. L.](#), 67 AD2d 948). Under certain circumstances, due to the nature of the inability or unwillingness of the parent to provide minimum care, the finding of a lack of minimum care necessarily includes the finding of impairment or imminent danger of impairment. Thus, for example, while a mother's mental retardation may not be a per se basis

for a finding of neglect ([Matter of Trina Marie H.](#), 48 NY2d 742), evidence that she *1074 "suffers from [a] mental illness ... and that, as a result of said illness, she is unable now and will likely remain unable in the future to properly care for a child" is sufficient to sustain a finding of neglect ([Department of Social Servs., St. Lawrence County v Joan R.](#), 61 AD2d 1108; see, also, [Matter of Eugene G.](#), 76 AD2d 781). Similarly, proof that a parent is keeping her daughter out of school, as a means of compelling the school to change the kind of education available to the student, without providing the child with the education required to meet the minimum standards prescribed by section 3204 (subd 3, par a, cl [1]) of the Education Law, will support a finding of neglect ([Matter of Baum](#), 61 AD2d 123). Neglect has also been found where a parent keeps her children out of school and attempts to provide equivalent educational training at home, which is found to be inadequate ([Matter of Franz](#), 55 AD2d 424). Here, however, the only testimony offered by petitioner was that of the principal of the elementary school attended by respondent's daughter during the period at issue. This testimony was based largely upon school records and reports of teachers and other school employees. The thrust of the testimony was aimed at establishing that respondent's daughter had been absent or tardy without excuse an excessive number of times. There is absolutely no proof that the unexcused absences, either alone or coupled with the unexcused tardiness of respondent's daughter on other occasions, had any adverse impact upon the child's education. The child's classroom teacher during the period in issue did not testify, and no reports concerning the child's performance in the classroom were introduced; nor did the principal have any first hand knowledge of such performance. Accordingly, the conclusion that respondent has failed to exercise a minimum degree of care in supplying her daughter with education is speculative, and there is absolutely no support in the record for the further inference that the child's physical, mental or emotional condition has been impaired or is in imminent danger of being impaired (see [Family Ct Act, § 1012](#), subd [h]). The remaining proof upon which the Family Court based its finding of neglect is similarly deficient. In our view, the proof of an isolated instance of the child appearing in dirty clothes and without shoes, and that she often had to telephone a relative to find out where she should go after school, is insufficient to establish respondent's lack of minimum care for her daughter. Moreover, there is no proof of any adverse effect or threat of adverse effect upon the child's physical, mental or emotional condition.

HEADNOTES

PARENT, CHILD AND FAMILY
ABUSED OR NEGLECTED CHILD

(1) Order of Family Court which placed respondent's child in foster care upon finding that child was neglected reversed, on law and facts --- Family Court found that respondent's daughter was neglected child based upon proof of some 13 unexcused absences from school, that she was tardy number of other times, that she had appeared in school dirty and without shoes and that on many occasions child had made telephone call to relatives after school to find out where she should go --- This proof is insufficient to support finding of neglect.

PARENT, CHILD AND FAMILY
ABUSED OR NEGLECTED CHILD

(2) Under certain circumstances, due to nature of inability or unwillingness of parent to provide minimum care, finding of lack of minimum care necessarily includes finding of impairment or imminent danger of impairment; thus, while mother's mental retardation may not be per se basis for finding of neglect, evidence that she 'suffers from [a] mental illness *** and that, as a result of said illness, she is unable now and will likely remain unable in the future to properly care for a child' is sufficient to sustain finding of neglect; similarly, proof that parent is keeping her daughter out of school, as means of compelling school to change kind of education available to student, without providing child with education required to meet minimum standards prescribed by section 3204 (subd 3, par a, cl [1]) of Education Law, will support finding of neglect; neglect has also been found where parent keeps her children out of school and attempts to provide equivalent educational training at home, which is found to be inadequate.

PARENT, CHILD AND FAMILY
ABUSED OR NEGLECTED CHILD

(3) Proof upon which Family Court based its finding of neglect is deficient ---Proof of isolated instance of child appearing in dirty clothes and without shoes, and that she often had to telephone relative to find out where she should go after school, is insufficient to establish respondent's lack of minimum care for her daughter --- Moreover, there is no proof of any adverse effect or threat of adverse effect upon child's physical, mental or emotional condition.

PARENT, CHILD AND FAMILY
ABUSED OR NEGLECTED CHILD

(4) Subdivision (f) of section 1012 of Family Court Act which defines 'neglected child' requires finding that parent is not providing minimum care and that, as result, physical, mental or emotional condition of child has been impaired or is in imminent danger of becoming impaired --- However, only testimony offered by petitioner was that of principal of elementary school attended by respondent's daughter based largely upon school records and reports of teachers and other school employees --- There is absolutely no proof that unexcused absences, either alone or coupled with unexcused tardiness of respondent's daughter, had any adverse impact upon child's education; child's classroom teacher did not testify, and no reports concerning child's performance in classroom were introduced; nor did principal have any first hand knowledge of such performance --- Accordingly, conclusion that respondent failed to exercise minimum degree of care in supplying her daughter with education is speculative, and there is absolutely no support in record for further inference that child's physical, mental or emotional condition has been impaired or is in imminent danger of being impaired (see Family Ct Act, § 1012, subd [b]).

Order reversed, on the law and the facts, without costs, and petition dismissed.

Mahoney, P. J., Sweeney, Main, Mikoll and Casey, JJ., concur.

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EXHIBIT 25

with the grant of authority. See *Schneberger*, 176 N.W.2d at 786. "The operation of the consent provision of section 321.493 has been clearly defined by this court in the seventy years since its enactment." *Moritz*, 437 N.W.2d at 900. The legislature has apparently agreed with our interpretations because it has left this section unchanged for all intents and purposes down through these many years. Under these circumstances, we believe the plaintiffs' claim should be made to the legislature, rather than this court. We decline plaintiffs' invitation to adopt the "initial permission" rule.

AFFIRMED.



In the Interest of B.B., A Child.

Appeal of STATE of Iowa.

No. 88-1348.

Supreme Court of Iowa.

May 17, 1989.

Proceedings were brought to have mildly to moderately retarded 11-year-old child adjudged child in need of assistance because of his parents' refusal to send him to school. The Juvenile Court, Tama County, Sylvia A. Lewis, Referee, dismissed petition and the District Court, Tama County, Robert E. Sosalla, Associate Judge, affirmed. State and child's guardian ad litem appealed. The Supreme Court, LAVORATO, J., held that mildly to moderately mentally retarded child was child in need of assistance because of his parents' refusal to send him to school, which constituted failure to exercise reasonable degree of care in supervising him.

Reversed and remanded with directions.

1. Infants ⇐154

Mildly to moderately retarded child could be adjudged child in need of assistance because of his parents' refusal to send him to school, notwithstanding their efforts to educate him at home; parents' refusal constituted failure to exercise reasonable degree of care in supervising child, depriving him of special education classes to maximize his talents and abilities. I.C.A. § 232.2, subds. 6, 6, par. c(2).

2. Infants ⇐222

Parents would be permitted to keep custody of mildly mentally retarded child who was adjudged child in need of assistance because of parent's refusal to send him to school, although placement outside home would be considered if parents demonstrated continued resistance to in-school teaching. I.C.A. §§ 232.101, subd. 1, 232.102.

Thomas J. Miller, Atty. Gen., Gordon E. Allen, Deputy Atty. Gen., Charles K. Phillips, Asst. Atty. Gen., for appellant.

Patrick L. Wilson, Marshalltown, for appellee parents.

Stephen A. Kenkel, Toledo, guardian ad litem for the child.

Considered by McGIVERIN, C.J., and SCHULTZ, CARTER, LAVORATO, and NEUMAN, JJ.

LAVORATO, Justice.

At issue here is whether a mildly mentally retarded child should be adjudged a child in need of assistance within the meaning of Iowa Code chapter 232 because of his parents' refusal to send him to school. The juvenile court referee dismissed a CHINA petition, holding that the child was not in need of assistance and that the compulsory education statutes provided the State's only remedy. The district court affirmed the referee's decision. We reverse and remand with directions.

[1] I. Barry, the child, is an eleven-year-old Native American who lives with his family at the Mesquakie Indian Settlement near Tama. The father is a Native

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American, and his mother is not. Four other children, ranging in age from fifteen through nineteen, live in the home.

In 1983 Barry was enrolled in kindergarten in the Tama school district. During the school year, he attended classes 154 days and was absent twenty-six days. School officials recommended that he be placed in special education classes the following year because his progress was unsatisfactory in all categories. Barry's parents objected, and he did not attend school during the 1984-85 school year.

Barry's mother, Anna, is certified in elementary education but not in special education. During the 1984-85 school year, with a curriculum provided by school officials, she taught Barry at home.

Barry reached the age of compulsory school attendance the following year. He was scheduled to return to school for special education tutoring. He, however, attended classes only fifty-one days and was absent 129 days.

During the 1986-87 school year, Barry attended classes nine and one-half days and was absent 170 days. A CHINA petition was filed in January 1988. During the first half of the 1987-88 school year, before the petition was filed, Barry had only attended school eighteen and one-half days and was absent sixty-four and one-half days.

Through these long periods of absenteeism, Anna gave Barry's illnesses as the reason for keeping him home. Medical records do indicate that Barry has suffered from ear and throat infections. Treatment for these illnesses have included insertion of tubes in his ears and a tonsillectomy. The record, however, is barren of any medical evidence that Barry's health would support his virtual absence from school for nearly three years, from late 1985 through March 1988, when the CHINA hearing was held. Moreover, the parents have not sought a health exemption from compulsory school attendance. See Iowa Code § 299.5 (1987).

During the CHINA hearing, Anna testified at great length about Barry's illnesses, but her testimony was not supported by

the statements of other witnesses. She also testified that Barry played outdoors often, an assertion seemingly at odds with her claim that he is too ill to go to school.

The Area Education Agency psychologist, who had visited the home, testified that Barry seemed healthy during the visits. School district personnel testified that Barry appeared healthy on the days he did attend school. The juvenile court referee noted that Barry sat through two afternoons at trial and left quickly with the school superintendent to go to school on the second afternoon, even though his mother histrionically objected that he was too sick to go.

Medical and educational professionals who have evaluated Barry agree that he is mildly to moderately mentally retarded but educable. The school psychologist who observed the in-home education during 1984-85 testified that while Anna was a conscientious teacher, Barry had made no educational progress. The psychologist opined that Barry was not receiving enough lesson time and that he was suffering educational, social, and emotional harm by being withheld from school. Simply put, the psychologist believed that Barry needs the skills he would gain by being with other children. The psychologist also believed that Barry was reaching the age when it would be crucial for him to attend school.

In June 1987 a team of professionals in psychiatry, education, medicine, and social services conducted an independent evaluation of Barry. In a detailed report, the team concluded that Barry was retarded but educable and that he needed to attend special education classes to maximize his potential. The parents disagreed with the recommendations and refused to release the report to school officials.

School officials admitted that they had done little to compel Barry's school attendance. The elementary school principal, who also serves as a truant officer, testified he had never been to the home to investigate or to compel Barry's attendance at school. He had failed to do so, he testified, because of Anna's alleged threats to

harm anyone who would try to compel such attendance.

Anna was convicted in 1987 of violating Iowa's Compulsory Education Act for her refusal to send Barry to school. *See* Iowa Code §§ 299.1, 299.6. She received a suspended sentence and was placed on probation on the condition that she give assurances that Barry would attend school regularly.

In January 1988, at about the same time the CHINA petition was filed, the State prosecuted both parents for similar violations. They were found guilty, fined, and given jail time. Part of their jail time was suspended on the condition that Barry would be enrolled in and attend an accredited school. Anna was also found guilty of harassment. The parents have appealed these last convictions.

In alleging that Barry is a child in need of assistance, the State relied on three alternative definitions of a child in need of assistance. Those definitions are found in Iowa Code section 232.2(6) and include children who are (1) physically abused or neglected, (2) likely to suffer harmful effects from the parents' failure to exercise reasonable care in supervising them, and (3) in need of treatment for mental or emotional conditions and whose parents do not or cannot provide the needed treatment. *See* Iowa Code § 232.2(6)(b), (c)(2), (f).

The juvenile court referee dismissed the petition, finding that the State had failed to prove by clear and convincing evidence that Barry was a child in need of assistance. The referee noted that the juvenile code "does not specifically provide for child in need of assistance adjudication where parents fail to allow their children to attend school." According to the referee, the provisions applicable to the latter problem are found in Iowa Code chapter 299, the compulsory school attendance law.

On review, the district court affirmed. The State has appealed and has been joined in the appeal by Barry's guardian ad litem, who agrees that Barry is a child in need of assistance.

II. Iowa Code section 232.2(6) pertinent-ly defines a child in need of assistance as

an unmarried child:

....

b. Whose parent ... has physically abused or neglected the child, or is imminently likely to abuse or neglect the child.

c. Who has suffered or is imminently likely to suffer harmful effects as a result of:

....

(2) The failure of the child's parent ... to exercise a reasonable degree of care in supervising the child.

....

f. Who is in need of treatment to cure or alleviate serious mental illness or disorder, or emotional damage as evidenced by severe anxiety, depression, withdrawal or untoward aggressive behavior toward self or others and whose parent ... is unwilling or unable to provide such treatment.

The State alternatively alleged the three provisions as grounds for adjudicating Barry a child in need of assistance. The State, of course, has the burden of establishing these grounds by clear and convincing evidence in a CHINA proceeding. *See* Iowa Code § 232.96(2). Because we think the supervision allegation in section 232.2(6)(c)(2) most closely fits the facts here, we restrict our discussion to it.

Preliminarily, we note several general principles that control our decision. Our review is de novo, which means we give the trial court's findings substantial weight but are not bound by them. There is a rebuttable presumption that the best interests of a child are served by parental custody. Finally, the provisions of Iowa Code chapter 232 are to be liberally construed to protect the welfare of the child. *In re De Rocher*, 187 N.W.2d 730, 731 (Iowa 1971).

Giving the reasonable supervision definition in section 232.2(6)(c)(2) a liberal construction, we are convinced the evidence clearly and convincingly meets the definition.

We have recognized that a child's best interests are the paramount concern in applying the juvenile code. A child's best

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interests include not only proper care and treatment but also education. *In re G.R.*, 348 N.W.2d 627, 631 (Iowa 1984).

In *In re Devone*, 86 N.C.App. 57, 356 S.E.2d 389 (1987), the facts of which are strikingly similar to the facts here, the court was reviewing a juvenile court determination that a moderately mentally retarded child was neglected and dependent within the meaning of the North Carolina juvenile code. The basis of the juvenile court's determination was the parent's insistence on attempting to teach the child at home, thus denying the child's right to attend special education classes that were critical to his development and welfare.

The North Carolina juvenile code defines "neglected juvenile" as one who does not receive proper care, supervision, or discipline from his parents. N.C.G.S. § 7A-517(21). It defines a "dependent juvenile" as one who is in need of assistance and whose parent is unable to provide for his care or supervision. N.C.G.S. § 7A-517(13).

"Neglect" under Iowa Code section 232.2(6)(b) is more narrow in meaning than "neglect" under the North Carolina juvenile code. "Neglect" is defined in Iowa Code section 232.2(38) as

any nonaccidental *physical injury* suffered by a child as the result of the acts or omissions of the child's parent....

(Emphasis added.) Thus, unlike North Carolina's definition of neglect, physical injury to the child is a prerequisite to a finding of neglect under our "child in need of assistance" provisions.

"Neglect" under the North Carolina juvenile code, like "dependent," does, however, include lack of supervision—the very ground the State relies on here in seeking to establish that Barry is a child in need of assistance. Thus, the rationale put forth by the *Devone* court to support its finding of neglect and dependence has pertinent application to our determination here of lack of supervision. Affirming their trial court's finding that the juvenile was neglected and dependent, the *Devone* court said:

Although Jamie is a child of limited intelligence, he is entitled to an education which will help him reach his fullest potential. "It is fundamental that a child who receives *proper* care and *supervision* in modern times is provided a basic education. A child does not receive 'proper care' and lives in an 'environment injurious to his welfare' when he is deliberately refused this education, and he is 'neglected' within the meaning of [the North Carolina juvenile code]."

Because of his special needs, it is in Jamie's best interest that he receive the remedial care offered by the public school's special education classes. Such instruction is critical if he is to receive a "basic education." Although this remedial care is readily available to Jamie, respondent has prevented him from receiving it by keeping him out of public school and by insisting on teaching Jamie himself. Evidence that Jamie is being denied the remedial care he needs is sufficient proof to constitute neglect and a lack of proper care. A parent's insistence on attempting to teach a mentally retarded child constitutes neglect, if it denies that child the right to attend special education classes critical to the child's development and welfare.

Devone, 86 N.C.App. at 60, 356 S.E.2d at 390-91 (emphasis added) (citation omitted).

Likewise, Barry, although of limited intelligence, is entitled to educational opportunities that will maximize his talents and abilities. In his case, the experts all agree that special education classes *in school* will provide those opportunities and that no more time can be wasted in this respect.

Although Anna is a loving parent, she is also a doting and overprotective one. The referee was perceptive in discussing the problem as one of mother separating from child.

Anna's blind devotion to the child has clouded her thinking. She is simply irrational when it comes to Barry's being in school. She has tried to teach him at home, but to date he has made little progress. In fact, the experts agree that Barry's poor school attendance has ad-

versely affected his educational, social, and emotional development.

It is now time for Anna to give school a chance. There, Barry has at least a chance to acquire the social and self-help skills he so desperately needs just to survive.

For all of these reasons, we think the State has by clear and convincing evidence established that Barry is a child in need of assistance because of his parents' failure to exercise a reasonable degree of care in supervising him. The juvenile court referee and the district court erred in concluding otherwise.

[2] III. Our task now is to determine what steps should be taken to further Barry's best interests. Barry does have physical ailments. Anna has complained that no one in authority has seen fit to give the child a thorough physical examination to rule out major maladies. Such an examination should be done.

Next, Barry should attend school. We think that is the only way to ensure he will receive the benefit of special education classes. On the other hand, we think Barry should continue to have the love and attention of family and should therefore remain in the custody of his parents. *See* Iowa Code § 232.101(1). If the parents demonstrate continued resistance to in-school teaching, the juvenile court should then consider placement outside the home. *See* Iowa Code § 232.102.

Accordingly, we reverse and remand the case to the juvenile court referee with instructions to:

- (1) enter an order adjudicating Barry to be a child in need of assistance pursuant to Iowa Code section 232.96;
- (2) order an immediate physical examination of Barry at State expense;
- (3) hold a dispositional hearing pursuant to Iowa Code section 232.99; and
- (4) following the dispositional hearing, enter an order pursuant to Iowa Code section 232.101(1) permitting the parents to retain custody of Barry subject to such terms and conditions that ensure compliance with our determination relative to schooling.

The provisions of Iowa Code section 232.101(2) shall apply to whatever dispositional order is entered by the referee.

REVERSED AND REMANDED WITH DIRECTIONS.



Terry L. REID, Appellant,

v.

Audrey HANSEN, Individually and as Executor of the Estate of Arne Hansen d/b/a Arne R. Hansen Van & Storage; a/d/b/a Busy Bee Van & Storage Company; a/d/b/a Holiday Van & Storage; a/d/b/a Safeway Moving & Storage Company, Appellees.

No. 88-1177.

Supreme Court of Iowa.

May 17, 1989.

Employee injured while carrying a piano sought to recover in tort against employer, who was uninsured under Iowa Workers' Compensation Law. The District Court, Pottawattamie County, Paul H. Sulhoff, J., granted employer summary judgment, and employee appealed. The Supreme Court, Carter, J., held that: (1) the failure of plaintiff's employer to insure against liability under Iowa Workers' Compensation Law created a right of injured employee to sue in tort; (2) suit was not barred on basis of election of remedies; and (3) suit was not precluded by exclusive remedy provisions of Nebraska Workers' Compensation Law, under which employee had received benefits.

Reversed and remanded.

1. Workers' Compensation §2100

The failure of plaintiff's employer, who had principal place of business in Nebras-

EXHIBIT 26

**In the Matter of J.W. and J.C., Youths
in Need of Care.**

No. 86-399.

Supreme Court of Montana.

Submitted on Briefs Jan. 29, 1987.

Decided May 11, 1987.

The First Judicial District Court, County of Lewis & Clark, Henry Loble, J., found two children to be youths in need of care and granted temporary custody to county office of human services. Natural mother appealed. The Supreme Court, Turnage, C.J., held that: (1) evidence in report of county office of human services, including mother's previous history of psychiatric problems, fires in family home, older child's extensive absences from school, and inability of social workers to investigate these matters, supported probable cause to find that physical and mental health of children was in danger and was sufficient to warrant granting of temporary investigative authority; (2) grant of temporary custody of youth to Department of Social and Rehabilitation Services with recommendation that child be temporarily placed with his father in Arizona, was within court's authority under statute governing order for immediate protection of youth; and (3) evidence supported determination that children were youths in need of care.

Affirmed.

1. Infants ⇨181

Evidence in report of county office of human services, including mother's previous history of psychiatric problems, fires in family home, older child's extensive absences from school, and inability of social workers to investigate these matters, supported probable cause to find that physical and mental health of children was in danger and was sufficient to warrant granting of temporary investigative authority. MCA 41-3-102.

2. Infants ⇨226

District court order granting county office of human services right to place youths in foster care if deemed necessary for their protection was proper; mother would not cooperate with office's investigative efforts. MCA 41-3-403.

3. Infants ⇨203

Show cause hearing is not required to be held prior to removal of youths under statute governing order for immediate protection of youth. MCA 41-3-403.

4. Infants ⇨197

Legislature did not intent to consolidate petition to have youths declared in need of care and petition for temporary investigative authority. MCA 41-3-401, 41-3-402.

5. Infants ⇨203

Show cause hearing is only hearing required when petition for temporary investigative authority is filed. MCA 41-3-402.

6. Infants ⇨222

Grant of temporary custody of youth to Department of Social and Rehabilitation Services with recommendation that child be temporarily placed with his father in Arizona, was within court's authority under statute governing order for immediate protection of youth. MCA 41-3-403.

7. Infants ⇨181

Evidence supported determination that children were youths in need of care; mother had been hospitalized for psychiatric care, was presently in need of counseling, refused, for the most part, to accept medical treatment, older child told social workers that he looked after younger child during periods when his mother was acting irrationally and worried about younger child's safety when left alone with his mother, who left cigarettes burning and forgot to turn off the stove, older child's respiratory condition was aggravated by mother's cigarette smoking, and older child's poor school attendance due to sickness did not comport with pediatrician's opinion as to child's health.

MATTER OF J.W.

Cite as 736 P.2d 960 (Mont. 1987)

Mont. 961

8. Infants ¶173

Events from recent past relating to mother's mental condition are clearly relevant in determining whether mother is capable of properly caring for children.

Cannon & Sheehy, Edmund F. Sheehy, Jr., Helena, for appellant.

Mike Greely, Atty. Gen., Patricia J. Schaeffer, Asst. Atty. Gen., Mike McGrath, Co. Atty., Carolyn Clemens, Deputy Co. Atty., Nicholas Jacques, (Children), Helena, for respondent.

TURNAGE, Chief Justice.

The natural mother of J.W. and J.C. appeals orders of the First Judicial District Court, County of Lewis and Clark, finding J.W. and J.C. to be youths in need of care and granting temporary custody to the Lewis and Clark County Office of Human Services. We affirm.

The natural mother, B.W. (hereinafter "mother") has two children, J.C. and J.W. J.C., currently twelve, was born of a prior marriage of the mother. J.W. was delivered at home on December 18, 1984. Lewis and Clark County Office of Human Services (LCCOHS) received a referral concerning the birth. The mother stated she was unaware of her pregnancy.

On February 4, 1985, LCCOHS received a report that J.C. had extensive unexcused absences from school. On May 1, 1985, the mother was hospitalized for psychiatric care. The deputy county attorney filed a petition on behalf of LCCOHS requesting temporary investigative authority and protective services. The petition was granted by the District Court May 10, 1985. J.C. and J.W. were placed in foster care, with J.C. subsequently being allowed to spend the summer with his natural father in Arizona.

Both children were returned to the mother and LCCOHS terminated its involvement with the family in September, 1985, as it appeared the mother had successfully completed psychiatric treatment.

Following further reports concerning the children's welfare, a supplemental petition

for temporary investigative authority and protective services was filed November 15, 1985, on behalf of LCCOHS. A report attached to the petition listed the following LCCOHS referrals concerning the children:

10-10-85: Educational neglect—extensive absences from school. Referrant noted that [J.C.] has attended many different schools in Helena and has a history of lengthy unexcused absences.

10-25-85: Concerns about [the mother's] emotional condition and ability to care for her children, [J.C.'s] nonattendance at school, and fires in the family apartment on two consecutive days. Referrant said [the mother] attributed the fires to someone who she said had broken into her apartment, but [the mother] had been home both days.

10-28-85: Continued educational neglect of [J.C.]. Neighbors have seen him outside playing.

10-29-85: Concern expressed about [the mother's] emotional state and about [J.C.'s] not being in school since October 2.

11-01-85: Continued educational neglect of [J.C.].

Social worker Paul Heath made several attempts to visit the family but no one came to the door until 11-07-85. He was admitted briefly by [the mother] and saw both children, who seemed to be okay. [The mother] spoke very slowly and the house was stuffy and dark. [The mother] insisted that the social worker leave right away. Later on 11-07-85 social worker Laura Taffs attempted to visit to explore the recent concerns. [The mother] opened the door for about two minutes, would not allow the social worker in, and said she and her children were sick and were staying home. She then shut the door and would not respond to further knocking.

The District Court entered its order November 15, 1985, granting LCCOHS temporary investigative authority and the right to place the children in foster care if deemed necessary for their protection. Pursuant to the order, LCCOHS investigated the matter and placed the children in

foster care. A show cause hearing concerning the order was held December 3, 1985. Following hearing, the District Court entered its order dated December 6, 1985, placing temporary custody with the Department of Social and Rehabilitation Services (SRS) and declaring the children to be youths in need of care. The order further required LCCOHS to develop a treatment plan and recommended J.W. be placed in foster care and J.C. be placed with his father if a favorable home study was received from Arizona officials.

Pursuant to the mother's request for a hearing the District Court held a hearing on March 20, 1986. At the hearing, counsel for the mother questioned whether the District Court orders of November 15, 1985, and December 6, 1985, were a proper exercise of the court's jurisdiction. The district judge set a briefing schedule concerning the issue and set hearing for May 15, 1986.

At the hearing on March 20, 1986, testimony was heard from the psychologist and social workers involved with the case, the mother, and the foster mother of J.W. Dr. Leonard, a psychologist who examined the mother, testified that the mother had a borderline personality and most likely was schizophrenic when under stress. Dr. Leonard found the mother denied her problems and tended to reject counseling. Dr. Leonard concluded that without treatment the mother would be incapable at times of caring for her children.

The social workers testified that the visits between the mother and J.C. and J.W. conducted at LCCOHS had not gone well. The mother argued excessively with J.C. and was generally inattentive to J.W.'s needs. Two of the social workers testified that the mother had refused to sign the treatment plan. The mother indicated that she would not take medication if prescribed for her, did not believe she needed counseling, and on one occasion refused to speak with a psychologist who was brought to her home.

The District Court entered its order May 28, 1986, denying the mother's motion to vacate the November 15, 1985, and Decem-

ber 6, 1985, orders of the court. However, the District Court did strike the portion of the December 6, 1985, order finding the children to be youths in need of care. Prior to the May 28, 1986, District Court order the county attorney filed a petition on April 29, 1986, requesting that the children be declared youths in need of care. A hearing relating to the petition was held May 30, 1986.

At the hearing on May 30, 1986, testimony was heard from the children's pediatrician and the social worker working on the mother's case at that time. The pediatrician testified that J.W. has asthma and respiratory problems which are aggravated by cigarette smoke. Additionally, he stated there were no medical reasons for J.C.'s extensive absences from school. The social worker testified that the mother continued to smoke in J.W.'s presence even though aware smoking aggravated J.W.'s asthma. The social worker further testified that the mother continued to deny that she needed therapy and refused to be involved with the family focus program which would have assisted the mother in caring for her children.

On June 20, 1986, the District Court entered its order declaring the children to be youths in need of care, and granting continued temporary custody with SRS until a dispositional hearing could be held. A dispositional hearing was held July 28, 1986, and subsequently the District Court entered its order relating to disposition August 22, 1986. The court granted continued temporary custody with SRS and recommended that J.C. remain with his natural father in Arizona and J.W. remain in foster care. The court approved the proposed treatment plan, and ordered LCCOHS to inform the court of its recommendation as to placement of the children upon the mother's completion of the treatment plan.

The mother appeals and raises the following issues:

- 1) Whether the District Court erred in denying the motions to vacate?
- 2) Whether the District Court erred in declaring the children to be youths in need

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of care and in its subsequent dispositional order?

The mother contends the November 15, 1985, District Court order should have been vacated for the following reasons: 1) the petition for temporary investigative authority was not supported by probable cause that the children were in danger of being abused or neglected; 2) the petition did not request immediate removal of the children from the home; and 3) section 41-3-403, MCA, does not authorize immediate removal of the children from the home without a prior hearing. We find no merit to these contentions.

The supplemental petition dated November 15, 1985, was filed pursuant to §§ 41-3-402 and -3, MCA. The county attorney chose to file the petition under those statutes because LCCOHS could not actually determine whether the children were in danger of being abused or neglected. Such determination could not be made because the mother would not permit anyone to enter her home to investigate. Pursuant to § 41-3-402, MCA, the county attorney may file a petition for investigative authority and protective services "in cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected."

The LCCOHS report accompanying the petition established probable cause to investigate the possibility of abuse or neglect of the children. The report included: 1) numerous referrals concerning J.C.'s absence from school for no apparent reason; 2) concerns from neighbors about the mother's emotional condition and ability to care for her children; 3) reports of fires in the family apartment on two consecutive days; 4) the mother's recent hospitalization for psychiatric care and placement of the children in foster care at that time; and 5) social workers' reports that the mother would not answer the door to speak with them.

Section 41-3-102, MCA, provides in part:

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or

threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so;

[1] We find substantial evidence in the LCCOHS report supporting probable cause that the physical and mental health of J.W. and J.C. was in danger. The mother's previous history of psychiatric problems, the fires in the family home, J.C.'s extensive absences from school, and the inability of social workers to investigate these matters are sufficient facts to warrant the granting of temporary investigative authority.

[2] The November 15, 1985, District Court order granted LCCOHS the right to place the youths in foster care if deemed necessary for their protection. The mother contends the District Court improperly delegated its authority to remove the children from the home to LCCOHS. We disagree with this contention and find the court order to be within the scope of § 41-3-403, MCA. Pursuant to this section, the court may grant "such relief as may be required for the immediate protection of the youth."

LCCOHS was in a difficult position in this case because the mother would not cooperate with its investigative efforts. We find that portion of the court order granting LCCOHS the right to place the youths in foster care if deemed necessary for their protection was proper under the circumstances.

[3] The mother contends she was entitled to a show cause hearing before the removal of her children. The District Court order stated that the mother shall

immediately comply with the order or appear before the court to show cause why she should not be required to comply. The order was in compliance with § 41-3-403, MCA. There is no requirement in § 41-3-403, MCA, that a show cause hearing be held prior to removal of youths pursuant to this section. We find the November 15, 1985, District Court order to be lawful and a proper exercise of the court's discretion.

The mother next contends that the December 6, 1985, District Court order should be vacated for failure to comply with § 41-3-404, MCA, and § 41-3-406, MCA. Further, the mother contends that the placement of J.C. with his father in Arizona was not in compliance with § 41-3-406(3)(c), MCA.

[4] The mother argues that the filing of a petition for investigative authority under § 41-3-402, MCA, must also include a petition drawn pursuant to § 41-3-401, MCA. The mother points out that the 1985 amendment to § 41-3-401, MCA, eliminated § 41-3-401(13), MCA, which provided: "This section does not apply to a petition for temporary investigative authority and protective services." The mother claims the legislature clearly intended to consolidate petitions to have youths declared in need of care and petitions for temporary investigative authority. We find no legislative history to support this contention, nor is there any language in either section providing a petition filed pursuant to § 41-3-402, MCA, must be accompanied with a petition filed under § 41-3-401, MCA.

The mother seeks to have the December 6, 1985, order vacated for lack of an adjudicatory hearing pursuant to § 41-3-404, MCA, and a dispositional hearing pursuant to § 41-3-406, MCA. In denying the motion to vacate, the District Court found the proceedings to be under §§ 41-3-402 and -3, MCA, and a show cause hearing was properly held within 20 days as required by § 41-3-403, MCA.

[5] We agree with the District Court that a show cause hearing is the only hearing required when a petition for temporary investigative authority is filed under § 41-3-402, MCA. The District Court did strike its finding that the youths were in need of

care from the December 6, 1985, order as being in excess of its jurisdiction. We find no error by the District Court.

[6] In its December 6, 1985, order the District Court granted temporary custody of J.C. and J.W. to SRS with a recommendation that J.C. be placed with his father in Arizona following receipt of a favorable home study from Arizona officials. The mother contends this portion of the order is in violation of § 41-3-406(3)(c), MCA. We disagree. Section 41-3-406, MCA, relates to transfer of legal custody following the adjudicatory and dispositional hearings. The District Court granted *temporary* custody to SRS with a recommendation that J.C. be *temporarily* placed with his father in Arizona. We find this to be within the court's authority under § 41-3-403, MCA, which permits temporary disposition in the best interest of the youth.

[7] The next issue is whether the District Court erred in declaring J.W. and J.C. youths in need of care in its June 20, 1986, order. We find substantial credible evidence in the record supporting the District Court determination.

[8] Prior to the proceedings at issue herein, the mother experienced a psychotic break in May, 1985, and was hospitalized for psychiatric care. The children were placed in temporary foster care at that time. Contrary to the mother's assertions this evidence is relevant and was properly admitted. Events from the recent past relating to the mother's mental condition are clearly relevant in determining whether she is capable of properly caring for her children. The medical testimony reveals that the mother is presently in need of counseling and likely should be receiving medication. The record also indicates the mother has refused to accept medical treatment for the most part.

The older youth, J.C., told social workers that he looks after J.W. during periods when his mother is acting irrationally. J.C. worries about J.W.'s safety when left alone with the mother. The mother leaves cigarettes burning and forgets to turn off the stove. J.W. has a problem with respiratory illness which is aggravated by cigarette smoke. The mother is aware of this, but

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continues to smoke in the presence of J.W. J.W. will likely need frequent medical attention if exposed to smoke on a regular basis.

The mother claims J.C. has poor school attendance due to sickness. J.C.'s pediatrician disputed this claim stating that J.C. was a normal, healthy child. J.C. missed 73½ days during a school year while at Kessler School. In the fall of 1985, J.C. missed 33 consecutive school days while a student at Bryant School. J.C. informed his counselor that he was bored staying at home and rarely felt sick. Neighbors frequently saw him playing in the yard.

The mother asserts that poor school attendance is not educational neglect as defined in § 41-3-102, MCA, and is a matter for school authorities, not LCCOHS. We find J.C.'s poor school attendance to be a proper focus of inquiry in the LCCOHS investigation. The record is clear the mother is responsible for educational neglect of J.C.

An abused or neglected child is a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent. Section 41-3-102(2), MCA. In this case, it is clear J.W.'s welfare is in danger due to the mother's emotional and mental condition and J.C. has missed extensive schooling due to his mother. The medical evidence is that the mother's ability to care for J.W. and J.C. is questionable but that with therapy and medication the mother's problems are treatable. The treatment plan approved by the District Court provides for counseling and interaction between the mother and her children with the ultimate goal of returning custody of the children to their mother. We find no abuse of discretion or errors of law by the District Court.

The District Court is affirmed.

HARRISON, GULBRANDSON,
WEBER and HUNT, JJ., concur.



**Michael J. O'DONNELL, Claimant
and Appellant,**

v.

**RYANS, INC., Employer,
and**

**State Compensation Insurance Fund,
Defendant and Respondent.**

No. 86-595.

Supreme Court of Montana.

Submitted on Briefs March 12, 1987.

Decided May 13, 1987.

Claimant appealed from order of hearings examiner for Workers' Compensation Court, Timothy Reardon, J., denying motion for penalty for delay in paying medical expenses. The Supreme Court, Weber, J., held that Supreme Court did not have jurisdiction to hear claimant's appeal from order of hearings examiner denying motion for penalty, where issue was never presented to Workers' Compensation Judge.

Remanded.

1. Workers' Compensation ⇐1846

Supreme Court would consider sua sponte issue of whether it had jurisdiction over claimant's appeal directly from order of hearing examiner for Workers' Compensation Court denying motion for penalty, despite State Fund's failure to object to claimant's procedure. MCA 39-71-2904, 39-71-2907.

2. Workers' Compensation ⇐1834

Supreme Court only has jurisdiction to consider appeal from order of Workers' Compensation Judge, and Court will not entertain appeal from order of hearings examiner. MCA 39-71-2904, 39-71-2907.

3. Workers' Compensation ⇐1846

Supreme Court did not have jurisdiction to hear claimant's appeal from order of

EXHIBIT 27

In re P.B., D.B., & T.B.

L.B., Appellant.

Nos. 10-FS-1590, 10-FS-1591, 10-FS-1592.

District of Columbia Court of Appeals.

Submitted Jan. 24, 2012.

Decided Aug. 23, 2012.*

Background: District filed petitions alleging that mother's three children were neglected children. The Superior Court, Carol Ann Dalton, J., affirmed decision of Noel T. Johnson, Magistrate Judge, finding all three children neglected. Mother appealed.

Holdings: The Court of Appeals, Oberly, J., held that:

- (1) evidence supported finding of neglect based on failure to provide child with education as required by law;
- (2) evidence supported finding of neglect based on inadequate parental care or control; and
- (3) evidence supported finding of neglect based on mother's mental incapacity.

Affirmed.

1. Infants ⇌2159

In a child neglect proceeding, District of Columbia bears the burden of proving neglect by a preponderance of the evidence.

2. Infants ⇌2409

When reviewing the sufficiency of the evidence supporting a finding of child neglect, the appellate court must view the evidence in the light most favorable to the District of Columbia and draw every rea-

sonable inference in the District of Columbia's favor.

3. Federal Courts ⇌1066

The appellate court will not redetermine the credibility of witnesses where the trial court had the opportunity to observe their demeanor and form a conclusion.

4. Infants ⇌2415(3)

The appellate court will reverse a finding of child neglect only if it is plainly wrong or without evidence to support it.

5. Infants ⇌1941

The child neglect statute is a remedial enactment designed to protect the welfare of neglected and abused children, and it must be liberally construed to achieve that end. D.C. Official Code, 2001 Ed. § 16-2301(9)(A)(ii).

6. Infants ⇌1943, 1948

To establish child neglect, the government need only prove that the children are without the requirements of the neglect statute, which would mean without proper parental care or control; no finding of parental fault is required, making the child's condition, not the mother's culpability, the relevant focus of the court. D.C. Official Code, 2001 Ed. § 16-2301(9)(A)(ii).

7. Infants ⇌1943

In evaluating the child's condition in a neglect proceeding, the trial court's inquiry must go beyond simply examining the most recent episode, or a single snapshot, and instead must consider the entire mosaic in making its determination. D.C. Official Code, 2001 Ed. § 16-2301(9)(A)(ii).

8. Infants ⇌1992

Evidence supported finding of neglect based on failure to provide child with edu-

* The decision in this case was originally issued as an unpublished Memorandum Opinion and Judgment. It is now being published upon

the court's grant of the guardian ad litem's motion to publish.

IN RE P.B.

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cation as required by law, where child had missed so many school days that he was in danger of failing due to absenteeism and had remained unenrolled in school one month after moving back to the District. D.C. Official Code, 2001 Ed. § 16-2301(9)(A)(ii).

9. Infants ⇔1945, 1946, 2041

Evidence was sufficient to support finding of neglect based on inadequate parental care or control necessary for children's physical, mental, or emotional health; mother's home was incredibly dirty and unsanitary, her children had poor hygiene, and she consistently refused to cooperate with social workers and to accept offers of financial assistance that would have provided mother the means necessary to provide for her children. D.C. Official Code, 2001 Ed. § 16-2301(9)(A)(ii).

10. Infants ⇔2169(3, 5)

Evidence was sufficient to establish that mother suffered from a mental incapacity and that there existed a nexus between her incapacity and an inability to properly care for her children, thus supporting finding of child neglect; evidence included testimony of numerous witnesses who described mother's paranoid beliefs, delusional thinking, and seclusion, in addition to the testimony of experts who agreed that such behavior supported the existence of a mental illness. D.C. Official Code, 2001 Ed. § 16-2301(9)(A)(iii).

11. Infants ⇔1914, 1941

Proof of parent's mental incapacity alone is not enough to support finding of child neglect; the government also must show a nexus between a parent's mental incapacity and an inability to provide prop-

er parental care. D.C. Official Code, 2001 Ed. § 16-2301(9)(A)(iii).

A.R. Marblestein-Deare, La Plata, was on the brief for appellant L.B.

Kathleen A. Muldoon, Minneapolis, MN, was on the brief for appellee D.W.

Irvin B. Nathan, Acting Attorney General for the District of Columbia at the time the brief was filed, Todd S. Kim, Solicitor General, Donna M. Murasky, Deputy Solicitor General, and Pamela Soncini, Assistant Attorney General, were on the brief for the District of Columbia as appellee.

Amy Katherine Smith, guardian ad litem, was on the brief for appellees P.B., D.B., & T.B.

Before GLICKMAN and OBERLY, Associate Judges, and FERREN, Senior Judge.

OBERLY, Associate Judge:

L.B., the mother of P.B., D.B., and T.B., appeals the trial court's judgment affirming the magistrate judge's ruling that her three children are neglected within the meaning of D.C.Code § 16-2301(9)(A)(ii) and (iii) (Supp.2003).¹ The trial court affirmed three findings of neglect: (1) that L.B.'s oldest child, P.B., was neglected because he was "without . . . education as required by law," D.C.Code § 16-2301(9)(A)(ii); (2) that all three of L.B.'s children were neglected because they were "without proper parental care or control . . . necessary for [their] physical, mental, or emotional health" and that the deprivation was not due to lack of financial means, *id.*; and (3) that L.B.'s children were ne-

1. For convenience, and unless otherwise indicated, we refer to the Magistrate Judge and the Associate Judge who reviewed the find-

ings and conclusions of the Magistrate Judge interchangeably as the "trial court."

glected because L.B. suffered from a mental incapacity that prevented her from “discharg[ing] . . . her responsibilities to and for the child[ren].” *Id.* § 16–2301(9)(A)(iii). On appeal, L.B. challenges the sufficiency of the evidence supporting the findings of neglect. As to the finding of neglect under § 16–2301(9)(A)(ii), L.B. argues that: (1) the trial court should have concluded based on past school enrollment that L.B. would have eventually enrolled P.B. in school; and (2) the finding that the children were without the care necessary for their physical, mental or emotional health was based on events that were too dated to be probative and that were focused primarily on P.B. and that the decision to remove the children was made after a single visit to the home, during which there was no evidence that the children were unclean or uncared for. L.B. also challenges the finding that she has a mental incapacity within the meaning of § 16–2301(9)(A)(iii), arguing that neither expert could diagnose L.B. with a specific mental illness and that the evidence of L.B.’s mental incapacity was based on isolated facts “extracted over a span of years” and “grouped together without regard for time, frequency, or context.” L.B.’s arguments are without merit. We affirm, holding that the evidence was sufficient to support all three findings of neglect.

I. Facts

A. Removal of the Children From L.B.’s Care

P.B., D.B., and T.B. were six years old, two years old, and about one month old, respectively, at the time they were removed from their mother’s care in May 2010. The children had come to the attention of the Child and Family Services Agency (“CFSA”) in April 2010 when CFSA received a hotline report from the Department of Social Services (“DSS”) in

Charles County, Maryland, soon after L.B. moved back to the District of Columbia after having lived in Charles County for slightly over a year. While living in Charles County, L.B. had come in contact with DSS after a Maryland circuit court issued a protective order giving L.B. custody of D.B. on the condition that she cooperate with DSS and abide by a safety plan. L.B. refused to cooperate. Her DSS case manager, Ronald Lenzy, made ten to fifteen attempts to visit her between December 2009 and April 2010 (when L.B. moved back to the District), but Lenzy was able to complete only one visit. L.B. was hostile and defensive toward Lenzy and threatened to have him arrested for stalking her. L.B. often refused to talk to Lenzy when he called, frequently changing her phone number and accusing him of being a spy. Lenzy was concerned because L.B. was not receiving prenatal care while pregnant with T.B., lied to him about not having medical insurance, and failed to attend a court-ordered mental health evaluation.

Binu Abraham, the CFSA social worker assigned to investigate the case when L.B. moved back to the District of Columbia, made several attempts to visit L.B. and the children at the address provided in the DSS hotline report. He also called L.B. on several occasions, but she refused to speak with him. Abraham made his first home visit on April 30, 2010, and L.B.’s mother answered the door. She told him that neither L.B. nor the children lived there. When Abraham returned four days later on May 4, he found L.B.’s mother and the three children in the home. L.B.’s mother told Abraham that L.B. had been arrested and was not in the home. Abraham and L.B.’s mother created a safety plan in which L.B.’s mother agreed to be present whenever L.B. was with the children.

On Abraham's third visit to the home on May 10, no one answered the door. Abraham called L.B.'s mother, who told him that neither L.B. nor the children were living in the home but that P.B. was enrolled in school. Still suspicious that someone was in the home, Abraham called the police, and when they came, L.B. opened the door with T.B. in her arms. She immediately started yelling and accused the police officers of being Muslim attackers. When Abraham tried to calm her, L.B. started cursing and laughing. She refused to answer any questions or discuss the safety plan. Abraham removed the children from her care that day. Soon thereafter, the District filed petitions alleging that P.B., D.B., and T.B. were neglected children.

At the fact-finding hearing before the Magistrate Judge in August 2010, evidence of neglect spanned the time period from P.B.'s birth in 2003 to the months following the May 2010 removal of L.B.'s three children from her care. In addition to hearing from Lenzy and Abraham, the Magistrate Judge heard testimony from: (1) L.B. herself; (2) Katherine King, Board of Child Care ("BCC") social worker; (3) Danielle Franks, BCC social worker; (4) Dr. Susan Theut, an expert in child, adolescent, and adult psychiatry; (5) L.B.'s stepmother, V.B.; (6) L.B.'s stepsister, T.F.; (7) L.B.'s mother; (8) D.W., the father of D.B. and T.B.; and (9) Dr. Navveen Maddineni, an expert in adult psychiatry, who testified on L.B.'s behalf.

B. Condition of the Children and the Homes Where L.B. Lived With Them Prior to Their Removal From Her Care

V.B., T.F., and D.W. testified about their experiences with L.B. and the children at various points in time since P.B. was born. V.B. testified that from the time P.B. was a few months old until he was four or five

years old, she and L.B.'s father would take him for weekend visits. P.B. was often unclean, his clothes and fingernails were soiled, he had a lot of wax in his ears, and he smelled of urine. His hair was "long and dirty" and his shoes had no shoelaces. P.B. was often hungry, and V.B. believed he looked undernourished.

T.F. was a frequent visitor to L.B.'s various homes in the District after P.B. and D.B. were born. She testified that L.B.'s homes were unclean whenever she visited. "[B]alled up soiled" diapers lay everywhere. On more than one occasion, the kitchen sink was clogged with food. The homes were always very dark because the blinds were closed and there was only one lamp, which was on the floor without a shade. T.F. testified that P.B.'s bedroom "appeared to be a trash bedroom," cluttered with clothing and shoes and papers. The mattress in L.B.'s room was "extremely soiled" with "black spots on it" and no sheets. When L.B. moved to Charles County, T.F. visited her there and noticed again that the mattress was soiled and there were no sheets on the bed. During an evening visit in Charles County, T.F. found P.B. in his bedroom and he told her that he'd been in there all day. P.B. always appeared hungry and "extremely frail" and had "bags and black rings" under his eyes.

T.F. also had concerns about L.B.'s care of D.B. Two weeks after she was born, D.B. was still wearing the paper hospital shirt and the hospital band on her wrist, which was starting to chafe. T.F. always saw D.B. sleeping in her stroller—not a bed, although there was an unassembled crib in the home—and she smelled as if she had never been bathed. On one visit, T.F. noticed that D.B. was in an infant carrier that was too small for her, and her socks and toenails were "very dirty."

When D.W. would visit L.B.'s Charles County home to pick up D.B., he noticed there was "trash in the sink" and "everywhere," and "it wasn't clean at all." D.W. testified that D.B. was often unclean with "matted" uncombed hair, soggy diapers, and clothing that was too small.

The testimony of L.B.'s mother contradicted the testimonies of L.B.'s stepfamily and D.W. She described L.B.'s homes as always clean and well-stocked with food and the children as healthy and clean.

C. L.B.'s Mental Health

Evidence of L.B.'s mental health was based on the observations of her stepfamily, D.W., social workers, and Drs. Theut and Maddineni. During her interactions with L.B., V.B. stated that L.B. seemed paranoid, concerned that Muslims were following her and that her upstairs neighbor was an arsonist who she had heard about on the news. At one point in 2007, she told V.B. that she heard voices in her head. D.W. also testified that L.B. was paranoid and always thought "somebody [was out] to get her." On one of T.F.'s visits to Charles County when L.B. lived there, T.F. noticed that L.B. had set up a closed-circuit television in her home to monitor the front of the apartment building. D.W. testified that L.B. "would barricade herself in the house." After her father's funeral in 2009, L.B. "secluded herself from the family" and "constantly changed her phone number."

L.B. was also known to overreact and become agitated and hostile. T.F. recounted a time when L.B. responded to P.B.'s nosebleed by "running through the house yelling and screaming and shouting dial 9-1-1." She reacted similarly soon after P.B. was born by calling an ambulance when there was blood on the area where P.B.'s umbilical cord had come off.

After the children were removed and placed in foster care, L.B. repeatedly overreacted during supervised visits. The social workers who supervised the visits between L.B. and her children described L.B. as hostile and very angry during the visits, yelling at the social workers in front of the children and threatening to sue the agency or "hurt somebody." During two separate visits, she became convinced that some of P.B.'s loose baby teeth had been knocked out by someone in the foster home, despite P.B.'s and the social worker's explanation to the contrary, and she called the police both times. L.B. often was so angry and preoccupied during the visits that she did not spend much time visiting with her children.

Dr. Theut evaluated L.B. on July 16, 2010, for a little over an hour. Before her evaluation, she had reviewed documents from DSS, including an initial mental health assessment, and referral letters from BCC, neglect petitions, a CFSA investigation, and a social study of L.B. During the evaluation, L.B. demonstrated "an elevated mood" and "pressured speech," and she expressed "concerns . . . that there [was] a conspiracy against her" and that people she did not know were "trying to get back at her through trying to take her children away from her." Dr. Theut concluded that L.B. suffered from delusions and disordered thinking, and although more information would be needed for Dr. Theut to confirm a diagnosis, she concluded that L.B. showed signs of having a mood disorder. The additional testimony from family members about L.B.'s behavior supported Dr. Theut's "rule-out" diagnosis of a mood disorder.

According to Dr. Theut, a mood disorder like L.B.'s can interfere with a parent's ability to care properly for her children because "they become preoccupied with paranoid thinking, delusions, auditory hal-

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lucinations, and they can become so wrapped up in that that they're not able to care for their children appropriately." As a result, young children "begin to feel very distant, and they feel that . . . when they're upset or they need the parent, that parent's not available to them." Dr. Theut testified that when children witness their parents being aggressive, hostile, and "out of control," children can become very anxious; and when exposed to paranoid behavior, children may adopt their parent's paranoid views of the world.

Dr. Maddineni, the expert witness called on behalf of L.B., testified that during her 30- to 40-minute assessment of L.B., L.B.'s "speech was normal" and "she was logical, she was coherent," and she responded to questions "appropriately." Dr. Maddineni (who did not review any records and relied solely on L.B.'s self-reporting and her candor) saw no signs of depression or mania and no need for hospitalization or treatment, although she did conclude her evaluation with a tentative "rule-out" diagnosis of adjustment disorder and recommended that she see a psychiatrist "as needed." However, when presented with facts elicited from the testimony of family members and social workers, Dr. Maddineni agreed that the paranoid and delusional behaviors described, if true, indicated that L.B. "might be suffering from some kind of psychotic condition" that, without treatment, would "definitely impair one's ability to care for their kids."

D. P.B.'s Education

While enrolled in school in Charles County, P.B. missed 20 percent of school days, had been suspended from school, and was in danger of failing due to his high rate of absenteeism. Although the school was only "about 75 to 100 feet" from L.B.'s Charles County home, L.B. explained that she sometimes could not take P.B. to

school because she had to stay home to care for D.B. when D.B. was ill. When L.B. moved back to the District of Columbia, she did not enroll P.B. in school. L.B. testified that she tried to enroll him in school but was unable to do so because she did not have P.B.'s birth certificate and because she was on bed rest during the last month of her pregnancy with T.B.

The Magistrate Judge credited all the testimony except the testimony of L.B. and her mother and found all three children neglected. The reviewing judge affirmed the Magistrate Judge's decision.

II. Discussion

A. Standard of Review

[1–4] In a child neglect proceeding, the District bears the burden of proving neglect by a preponderance of the evidence. When reviewing the sufficiency of the evidence supporting a finding of neglect, "we must view the evidence in the light most favorable to the District and draw every reasonable inference in the District's favor." *In re E.H.*, 718 A.2d 162, 168–69 (D.C.1998) (internal quotation marks omitted). This court will not "redetermine the credibility of witnesses where, as here, the trial court had the opportunity to observe their demeanor and form a conclusion." *Id.* at 169 (internal quotation marks omitted). "[T]his court will reverse a finding of neglect only if it is plainly wrong or without evidence to support it." *In re A.B.*, 999 A.2d 36, 44 (D.C.2010) (internal quotation marks omitted).

[5] In reviewing the evidence, we also must keep in mind that "[t]he neglect statute is a remedial enactment designed to protect the welfare of neglected and abused children, and it must be liberally construed to achieve that end." *In re A.H.*, 842 A.2d 674, 684 (D.C.2004) (internal quotation marks omitted). The trial

court “has the paramount obligation and broad authority to protect the best interests of the child where the parent is unwilling or unable to do so.” *Id.* (internal quotation marks omitted).

B. Sufficiency of the Evidence:

D.C.Code § 16-2301(9)(A)(ii)

[6] A child is neglected within the meaning of D.C.Code § 16-2301(9)(A)(ii) if the child “is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his or her physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his or her parent.” The government need only prove that “the children are *without* the statutory requirements,” *i.e.*, “without proper parental care or control”; no finding of parental fault is required. *In re N.P.*, 882 A.2d 241, 250 (D.C.2005) (internal quotation marks omitted). “[T]he relevant focus for the court . . . is the child’s condition, not the mother’s culpability.” *In re E.H.*, 718 A.2d at 169 (internal quotation marks omitted).

[7] In evaluating the child’s condition, “[t]he trial court’s inquiry must go beyond simply examining the most recent episode,” *In re T.G.*, 684 A.2d 786, 788 (D.C. 1996), or a single snapshot, and instead “must consider the entire mosaic in making its determination.” *In re N.P.*, 882 A.2d at 250 (internal quotation marks omitted). We have held that the “entire mosaic includes an examination of any history of, but also the reasons for, neglect.” *In re T.G.*, 684 A.2d at 788 (internal quotation marks omitted); *see also In re A.H.*, 842 A.2d at 685 (acknowledging that a finding of neglect may not be “predicated on nothing more than a single snapshot of the family’s existence”).

[8] The trial court was not plainly wrong in finding that P.B. was without

education as required by law when he missed so many school days that he was in danger of failing due to absenteeism and when P.B. remained unenrolled in school one month after moving back to the District. Because the focus of the court’s inquiry is the child’s condition and not the parent’s fault, we find no error in the trial court’s not crediting L.B.’s excuses for P.B.’s lack of school attendance and enrollment. *See In re E.H.*, 718 A.2d at 169.

[9] Neither was the court plainly wrong in finding that all three children were without the proper parental care or control necessary for their physical, mental, or emotional health. In this case, the District sought to establish a pattern of neglect through testimony that covered a period of seven years. The testimony established that from the time after P.B.’s birth to the time L.B. lived in Charles County, her home was incredibly dirty and unsanitary, her children had poor hygiene, and she consistently refused to cooperate with social workers and to accept offers of assistance. Moreover, the evidence supports the trial court’s conclusion that the deprivation was not “due to [L.B.’s] lack of financial means” because there was testimony that L.B. was receiving public benefits and she turned down multiple offers of assistance from family members and social workers. *See In re A.H.*, 842 A.2d at 688 (“[E]vidence that the parent had . . . sufficient financial resources . . . could take the form of evidence that the parent was receiving or was eligible to receive public assistance.”).

Although the evidence of neglect in this case included testimony about particular visits to L.B.’s home that occurred several years ago, there was also testimony of more recent visits and interactions with L.B. and her children. In *In re Am. V.*, 833 A.2d 493 (D.C.2003), we upheld the

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trial court's finding of neglect based on "a pattern of neglect" that "had existed over an extended period of time with respect to the children's hygiene, clothing, and timely attendance at school." *Id.* at 496 (internal quotation marks omitted). Likewise, in *In re E.H.*, 718 A.2d at 170, we upheld the trial court's consideration of events that occurred several years before the District filed neglect proceedings.

The fact that there was no account of L.B.'s home on the day her children were removed from her care does not erase the years of evidence presented to the trial court, especially in light of evidence that L.B. remained uncooperative and hostile and refused to allow the social worker to walk through the home. Although the record contains little evidence of neglect specific to T.B., who was only about one month old at the time she was removed from L.B.'s care along with P.B. and D.B., nothing in the record indicates that L.B. changed the pattern of neglect in her home, which affected all of her children. Moreover, the finding of neglect based on mental incapacity, which we uphold for the reasons outlined below, is based on evidence that clearly affects L.B.'s ability to provide proper parental care to T.B. as well as to P.B. and D.B.

C. Sufficiency of the Evidence:
D.C.Code § 16-2301(9)(A)(iii)

[10, 11] A child is neglected within the meaning of D.C.Code § 16-2301(9)(A)(iii) if the child's parent is "unable to discharge his or her responsibilities to and for the child because of . . . mental incapacity." Proof of mental incapacity alone is not enough; the government also must show a "nexus between a parent's mental incapacity and an inability to provide proper parental care." *In re N.P.*, 882 A.2d at 251 (internal quotation marks omitted).

The trial court was not plainly wrong in finding that L.B. suffered from a mental incapacity and that there existed a nexus between her incapacity and an inability to properly care for her children. The trial court's finding of mental incapacity was based on the testimony of numerous witnesses who described L.B.'s paranoid beliefs, delusional thinking, and seclusion, and on the opinions of both experts, who agreed that such behavior supported the existence of a mental illness. This testimony presented sufficient evidence to support the trial court's finding. Although neither Dr. Theut nor Dr. Maddineni had done enough of an assessment of L.B. to confirm that she suffered from a particular mental illness, "mental incapacity" does not "refer[] only to a diagnosable mental illness." *In re N.P.*, 882 A.2d at 251.

In finding that there existed the requisite nexus, the trial court credited the experts' testimony that L.B.'s delusional, paranoid, and agitated behavior would cause her children anxiety and fear, preoccupy her, and otherwise impair her ability to provide proper parental care. L.B. is similar to the mother in *In re E.H.*, 718 A.2d at 170-71, "whose life was so dominated by persecutory delusions," including the belief in "imaginary toxic fumes," and who took her child "to the emergency room for the treatment of imaginary ailments" and suspected her family members of plotting against her and her child. Like the trial court in *In re E.H.*, which we held "was not required to overlook the obvious danger that some or all of [the mother's] traits might well have negative consequences for [E.H.]," *id.* at 171, we hold that the trial court in this case, acting as *parens patriae* in the children's interest, was not required to overlook the negative effects of L.B.'s apparent mental health issues on her children.

For the foregoing reasons, the judgment of the trial court is

Affirmed.



Michael S. GORBEY, Appellant,

v.

UNITED STATES, Appellee.

Nos. 08-CF-1080, 10-CO-1075.

District of Columbia Court of Appeals.

Argued Oct. 27, 2011.

Decided Sept. 20, 2012.

Background: Defendant was convicted in the Superior Court, Gregory Jackson, J., of carrying a dangerous weapon outside the home or business (CDW), possession of an unregistered firearm (UF), eight counts of unlawful possession of ammunition (UA), manufacture, transfer, use, possession, or transportation of explosives for an unlawful purpose, and attempted manufacture or possession of a weapon of mass destruction (WMD). Defendant appealed. Subsequently, he filed motion to vacate or set aside his conviction, which was denied. Appeals were consolidated.

Holdings: The Court of Appeals, Thompson, J., held that:

- (1) defendant was competent to stand trial during guilt phase of trial;
- (2) defendant's waiver of his right to counsel was knowing and voluntary;
- (3) trial court's obligation to conduct an inquiry as to whether defendant understood the consequences of failing to assert the insanity defense, was fully informed of alternatives available, and freely chose to waive the insanity de-

fense was triggered at sentencing phase of trial proceedings;

- (4) sufficient evidence supported CDW convictions;
- (5) sufficient evidence supported conclusion that defendant constructively possessed explosive device found in truck;
- (6) convictions for possession of an explosive device and attempted manufacture or possession of a WMD did not merge; and
- (7) trial court's refusal to allow defendant to call certain witnesses to testify did not violate his constitutional right to compulsory process.

Affirmed and remanded.

1. Constitutional Law ⇌4782

Due process prohibits the criminal prosecution of a defendant who is not competent to stand trial. U.S.C.A. Const. Amend. 14.

2. Mental Health ⇌432

The test for determining defendant's competency to stand trial is whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding, and whether he has a rational as well as a factual understanding of the proceedings against him.

3. Criminal Law ⇌625.10(4)

Where there is evidence raising a substantial doubt as to a defendant's competency to stand trial, the trial judge is under a constitutional duty to order a hearing sua sponte.

4. Criminal Law ⇌625.10(2.1)

In determining whether a hearing to determine defendant's competence to stand trial is warranted, factors such as his irrational behavior, demeanor at trial, prior medical opinions, evidence of mental illness, and representations by defense

EXHIBIT 28

after the accident. The interpretation of insurance policy language is a question of law. *Meister*, 479 N.W.2d at 376. Therefore, summary judgment was appropriate.

Affirmed.



**In the Matter of the WELFARE
OF B.A.B., Juvenile.**

No. C7-97-1140.

Court of Appeals of Minnesota.

Jan. 13, 1998.

In child protection proceeding, the District Court, Waseca County, Renee L. Worke, J., determined that mother's educational neglect made child a child in need of protective services (CHIPS). Mother appealed. The Court of Appeals, Lansing, J., held that 20 absences in seven months amounted to neglect, regardless of whether such absences also amounted to habitual truancy.

Affirmed.

1. Infants ⇌159

Parent's persistent failure to secure child's regular attendance at school supports adjudication that the child is in need of protective services, irrespective of whether the absences constitute habitual truancy as defined by statute. M.S.A. § 260.015, subds. 2a(3), 19.

2. Infants ⇌159

Child's recorded absences from school 20 times in seven months amounted to "educational neglect," regardless of whether child's absences rose to level of statutory

habitual truancy. M.S.A. § 260.015, subds. 2a(3), 19.

See publication Words and Phrases for other judicial constructions and definitions.

3. Infants ⇌252

Findings in child in need of protective services (CHIPS) proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence; under "clearly erroneous" portion of standard of review, individual fact-findings will not be set aside unless review of entire record leaves court with the definite and firm conviction that a mistake has been made. M.S.A. § 260.015, subds. 2a(3), 19.

4. Infants ⇌252

In juvenile protection proceedings, reviewing court makes close inquiry to determine whether record contains substantial evidence to support the district court's decision, taking into account that the burden of proof in the district court is "clear and convincing" evidence. M.S.A. § 260.015, subds. 2a(3), 19.

5. Statutes ⇌223.2(1.1)

Statutes "in pari materia" are those relating to the same person or thing or having a common purpose.

See publication Words and Phrases for other judicial constructions and definitions.

6. Statutes ⇌223.2(1.1)

Statutes in pari materia should be construed in light of one another.

7. Statutes ⇌223.2(35)

Educational neglect and habitual truancy provisions are not in pari materia because the statutes address different child protection issues. M.S.A. § 260.015, subds. 2a(3), 19.

8. Schools ⇌161

"Truancy" implies volitional conduct on the part of the child for which the child is responsible.

See publication Words and Phrases for other judicial constructions and definitions.

MATTER OF WELFARE OF B.A.B.

Minn. 777

Cite as 572 N.W.2d 776 (Minn.App. 1998)

9. Infants ¶159

Deprivation of education need not be severe to warrant finding of educational neglect, where disposition of child does not involve removal from parent's home. M.S.A. §§ 260.015, 260.191.

Syllabus by the Court

A parent's persistent failure to secure a child's regular attendance at school supports an adjudication that the child is in need of protective services under Minn.Stat. § 260.015, subd. 2a(3) (1996), irrespective of whether the absences constitute habitual truancy as defined by Minn.Stat. § 260.015, subd. 19 (1996).

John L. Fossum, Northfield, for appellant mother.

Larry Collins, Waseca County Attorney, Paul M. Dressler, Assistant Waseca County Attorney, Waseca, for respondent.

Considered and decided by LANSING, P.J., and WILLIS, and FOLEY,* JJ.

OPINION

LANSING, Judge.

[1, 2] A parent challenges the district court's determination that her child is in need of protective services (CHIPS) as lacking necessary education under Minn.Stat. § 260.015, subd. 2a(3) (1996). The parent primarily challenges the legal adequacy of a finding of educational neglect when the child's absences do not meet the statutory definition of habitual truancy. We affirm.

FACTS

Seven-year-old B.A.B. and her siblings live with appellant, their mother. B.A.B. attends a public elementary school. The family service coordinator for B.A.B.'s school filed a CHIPS petition alleging that B.A.B. is without necessary education because her parent is unable or unwilling to provide that care

and that B.A.B. is an habitual truant. The parent denied the allegations of the petition, and an adjudication hearing was held.

The evidence at the hearing demonstrated B.A.B. began the 1996-97 school year as a first-grade student, but was returned to kindergarten in November 1996 because of poor academic performance. She continues to struggle academically and receives special services in reading and math. By mid-September 1996 B.A.B. already had several absences. The family services coordinator made multiple visits to B.A.B.'s home to discuss school attendance. Various explanations were provided for B.A.B.'s absences, including illness and oversleeping. The meetings with B.A.B.'s parent did not result in any improvement in B.A.B.'s attendance. The coordinator testified that on at least five occasions during the current school year, she had personally gone to B.A.B.'s home to pick her up when B.A.B. did not arrive at school. A parenting aide who works with the family through a county human services program also stated that she had often given B.A.B. a ride to school because she had missed the bus.

The school attendance records show that B.A.B. was absent (excused and unexcused) for 20 full days of school between September 3, 1996, and April 2, 1997, that she was tardy nine times, and missed an additional morning session. The computer system for the kindergarten students tracks their attendance only every other day and thus the recorded absences do not register B.A.B.'s total absences.

B.A.B.'s parent testified that health problems, including earaches, asthma, and head lice, were the primary reason for B.A.B.'s absences from school. On some days B.A.B.'s parent contacted the school to explain why B.A.B. was absent, but on other days the family just overslept.

B.A.B.'s medical records show that she was seen by a doctor on seven of the days when the school records show she was absent from school. The entries for five of these visits

art. VI § 2.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const.

indicate that B.A.B. was seen because of ear infections and was prescribed medication. But the entries for two other visits do not indicate that B.A.B. was unable to attend school. The entry for one visit indicates that B.A.B. "does not seem ill" and the entry for the other visit states that B.A.B. is able to participate in activities at school. A school summary of absences indicated that B.A.B. missed three full days of school without any reason and that B.A.B.'s parent reported illness and head lice as the explanation for the other absences.

The district court adjudicated B.A.B. to be in need of protection or services on the ground that B.A.B. is without necessary education because her parent is unable or unwilling to provide that care under Minn.Stat. § 260.015, subd. 2a(3) (1996). The court directed B.A.B.'s parent to ensure that B.A.B. attends school, specifying that the only valid excuse for missing school would be illness, verified by a physician's statement. The order also provided that absent an emergency, B.A.B.'s doctor appointments must be made after school hours.

ISSUE

Does clear and convincing evidence support the district court's determination that B.A.B. is in need of protection or services because she is without necessary education due to appellant's neglect?

ANALYSIS

[3] Findings in a CHIPS proceeding will not be reversed unless clearly erroneous or unsupported by substantial evidence. *In re Welfare of D.N.*, 523 N.W.2d 11, 13 (Minn. App.1994), *review denied* (Minn. Nov. 29, 1994). Under the "clearly erroneous" portion of this court's review of the district court's findings, a district court's individual fact-findings will not be set aside unless the review of the entire record leaves the court "with the definite and firm conviction that a mistake has been made." *In re Welfare of D.T.J.*, 554 N.W.2d 104, 107 (Minn.App.1996) (quoting *In re Estate of Beecham*, 378 N.W.2d 800, 802 (Minn.1985)).

[4] In juvenile protection proceedings, this court determines whether the record contains substantial evidence to support the district court's decision, taking into account that the burden of proof in the district court is "clear and convincing" evidence. *D.T.J.*, 554 N.W.2d at 108 (citing Minn. R. Juv. P. 59.05 and *In re Welfare of Rosenbloom*, 266 N.W.2d 888, 889-90 (Minn.1978)). The reviewing court will "closely inquire into the sufficiency of the evidence to determine whether the evidence is clear and convincing." *In re Welfare of Clausen*, 289 N.W.2d 153, 156 (Minn.1980).

The CHIPS petition alleged both educational neglect under Minn.Stat. § 260.015, subd. 2a(3), and that B.A.B. is an "habitual truant" under subsection 12 of the same statute. The district court determined that there was educational neglect under Minn. Stat. § 260.015, subd. 2a(3), but did not address the allegation that B.A.B. is an habitual truant.

A child is in need of protection or services when the child

is without necessary food, clothing, shelter, **education**, or other required care for the child's physical or mental health or morals because the child's parent, guardian or custodian is unable or unwilling to provide that care.

Minn.Stat. § 260.015, subd. 2a(3) (1996) (emphasis added).

An "habitual truant," defined in a separate subsection, is

a child under the age of 16 years who is absent from attendance at school without lawful excuse for seven school days if the child is in elementary school or for one or more class periods on seven school days if the child is in middle school, junior high school, or high school.

Minn.Stat. § 260.015, subd. 19 (1996). B.A.B.'s parent contends that the record does not show more than seven unexcused absences which is necessary to sustain a finding of habitual truancy, and therefore the evidence is insufficient to support a finding of educational neglect. We disagree.

[5-8] Statutes "in pari materia" are those "relating to the same person or thing or

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Minn. 779

Cite as 572 N.W.2d 776 (Minn.App. 1998)

having a common purpose.” *Apple Valley Red-E-Mix, Inc. v. State*, 352 N.W.2d 402, 404 (Minn.1984) (citing *Black’s Law Dictionary* (rev. 5th ed.1979)). Statutes in pari materia should be construed in light of one another. *Id.* But the educational neglect and habitual truancy provisions are not in pari materia because the statutes address different child protection issues. Truancy implies volitional conduct on the part of the child for which the child is responsible. *In re Welfare of B.K.J.*, 451 N.W.2d 241, 243 (Minn.App. 1990) (citing *In re L.Z.*, 396 N.W.2d 214, 218 (Minn.1986)). But when the child is absent from school because of the actions of the parent, the appropriate basis for extending protection or services is Minn.Stat. § 260.015, subd. 2a(3). *Id.* Because habitual truancy focuses on the behavior of the child, whereas educational neglect focuses on the behavior of the parent, the threshold requirement for a finding of habitual truancy that an elementary school child be absent from school for seven school days without lawful excuse does not apply to an educational neglect determination.

[9] B.A.B.’s parent contends that because B.A.B.’s absences from school were due primarily to her health problems, the evidence is not clear and convincing that the parent’s conduct caused a severe deprivation of B.A.B.’s education. We agree that a previous opinion of this court holds that a “severe deprivation of education” is necessary “to warrant a CHIPS determination and removal” of children from a parent’s home under Minn.Stat. §§ 260.015 and 260.191. *In re Welfare of T.K.*, 475 N.W.2d 88, 93 (Minn. App.1991) (emphasis added). But the district court did not order that B.A.B. be removed from her home. The court simply directed B.A.B.’s parent to ensure that B.A.B. attend school every day, schedule nonemergency medical appointments for after-school hours, and provide a physician’s statement to verify B.A.B.’s absences for ill-

ness. Neither *T.K.* nor Minn.Stat. §§ 260.015 requires a showing of “severe deprivation” of education to support a CHIPS adjudication when the disposition does not involve the drastic step of removing the child from the home. See *In re Welfare of Wachlin*, 309 Minn. 370, 374, 245 N.W.2d 183, 185 (1976) (indicating that child’s poor attendance and unkempt appearance at school were directly attributable to parent’s habits and attitude and supported neglect determination).

Our review of the record convinces us that some of B.A.B.’s absences were due to illness and that B.A.B.’s parent has not demonstrated an indifferent attitude towards B.A.B.’s welfare. But the record amply supports the district court’s findings with respect to B.A.B.’s unexcused absences and the finding that on other occasions the family services coordinator and county parenting aide assumed the responsibility of insuring B.A.B.’s attendance at school. We note also the evidence that regular school attendance is particularly critical for B.A.B. because of her academic problems. Under these circumstances, the parent’s persistent failure to ensure B.A.B.’s regular attendance at school warranted the CHIPS adjudication.

DECISION

The district court properly adjudicated B.A.B. to be a child in need of protection or services on the ground that she lacks necessary education because appellant is unable or unwilling to provide that care pursuant to Minn.Stat. § 260.015, subd. 2a(3).

Affirmed.



EXHIBIT 29

IN RE J.C.

Ga. 475

Cite as 591 S.E.2d 475 (Ga.App. 2003)

derstand, but I do not have the money to be able to hire one, sir.

[Q.] But you concede you do not meet the guidelines for poverty; is that right?

[A.] That's correct.

[Q.] All right, sir, well, now do you want a trial by jury or do you want a trial by the Court without a jury? It's up to you.

[A.] Jury, sir.

[Q.] A jury trial, all right, sir. You will have a seat over there in that—right here in this table.... Let them join issue, please.

Jury selection then began. This brief exchange did not establish that Bounds knowingly and voluntarily relinquished his right to counsel.

The state does not argue that the record shows a valid waiver. It claims, however, that Bounds failed to submit transcripts from other pretrial proceedings at which he was given the information necessary to make a valid waiver. But the state—not Bounds—has the burden of showing a valid waiver of counsel. Because the record before us fails to show a valid waiver, we vacate Bounds's conviction and sentence and remand the case for an evidentiary hearing to determine if he properly waived his right to counsel.⁸

Judgment vacated and case remanded with direction.

SMITH, C.J., and JOHNSON, P.J.,
concur.



264 Ga.App. 598

In the Interest of J.C. et al., children.

No. A03A2146.

Court of Appeals of Georgia.

Dec. 8, 2003.

Background: Mother and father of three minor children appealed from the order of

the Juvenile Court, Cherokee County, McElyea, J., finding their children to be deprived.

Holdings: The Court of Appeals, Johnson, P.J., held that:

- (1) evidence supported finding of deprivation, and
- (2) evidence did not exist to support finding of deprivation based upon lack of adequate food.

Affirmed.

1. Infants ⇐250, 252

Appellate court reviews the evidence from the juvenile court hearings in the light most favorable to the court's judgment and determines whether any rational trier of fact could have found by clear and convincing evidence that the children were deprived. West's Ga.Code Ann. § 15-11-2(8)(A).

2. Infants ⇐156

In considering a deprivation petition, the petition is brought on behalf of the child and it is the child's welfare and not who is responsible for the conditions which amount to deprivation that is the issue. West's Ga. Code Ann. § 15-11-2(8)(A).

3. Infants ⇐179

Deprivation of a child must be shown by clear and convincing evidence. West's Ga. Code Ann. § 15-11-2(8)(A).

4. Infants ⇐159

Evidence was sufficient to support finding of deprivation due to educational neglect; children had high number of unexcused absences from school, there was extended period of time during which children continued to miss school, and parents were unwilling to talk with school representative about their children's truancy. West's Ga.Code Ann. §§ 15-11-2(8)(A), 20-2-690.1(a).

⁸ See *Helmer*, supra; *McCants v. State*, 255 Ga. App. 133, 134(1), 564 S.E.2d 532 (2002); *Cope-*

land v. State, 224 Ga.App. 402, 403, 480 S.E.2d 623 (1997).

5. Infants ⇐156

Evidence was sufficient to support finding of deprivation due to parents' substance abuse; parents admitted to illegal drug use, trial court considered that parents' explanation of their marijuana use was not credible, father refused to take requested drug screening test, children were truant, and family home was both dirty and hazardous to children by reason of nail gun under sink and pill bottles laying around. West's Ga.Code Ann. §§ 15-11-2(8)(A), 15-11-94(b)(4)(B)(ii).

6. Infants ⇐252

Appellate court will defer to the trial court's findings as to the credibility of witnesses in child deprivation proceedings. West's Ga.Code Ann. § 15-11-2(8)(A).

7. Infants ⇐179

Clear and convincing evidence did not exist to support finding of deprivation based upon lack of adequate food; although social worker noticed during visit that there was not much food in refrigerator, mother testified there was additional food in cabinets and freezers, social worker admitted she did not look in drawers of refrigerator and that there was food in freezer and kitchen cabinets, there was no evidence that children appeared underfed or undernourished, and trial court ruled that lack of adequate food had been rectified. West's Ga.Code Ann. § 15-11-2(8)(A).

Richard A. Jones, Canton, for appellants.

Thurbert E. Baker, Attorney General, William C. Joy, Senior Assistant Attorney General, Shalen S. Nelson, Laura W. Hyman, Assistant Attorneys General, Dana M. Thompson & Associates, John D. Cline, for appellee.

JOHNSON, Presiding Judge.

The mother and father of the minor children J.C., T.C., and S.C. appeal from the order of the Juvenile Court of Cherokee County finding their children to be deprived. They claim that the evidence adduced at the deprivation hearing was insufficient to sup-

port the juvenile court's findings. We disagree and affirm.

[1] In considering the mother and father's appeal from the juvenile court's deprivation order, "we review the evidence from the juvenile court hearings in the light most favorable to the court's judgment and determine whether any rational trier of fact could have found by clear and convincing evidence that the children were deprived."¹ So viewed, the evidence shows that the children, aged twelve, nine, and two, lived with their parents in a rented mobile home. When caseworkers for the Cherokee County Department of Family and Children Services visited the home they noticed that both the inside and outside of the home were cluttered, that the floor was very dirty, and that there was dirt and old food in the refrigerator and encrusted food on the inside of the microwave. A nail gun was under the sink, and pill bottles were within reach of the children. There was very little food in the main compartment of the refrigerator. On one visit to the home, a Department worker saw that S.C. had old food on her face and was wearing soiled clothes.

Perry Marshall, a social worker for the Cherokee County School System, visited the residence in February 2003 as part of a truancy investigation of J.C. and T.C. Although he could tell someone was home, nobody answered the door. Marshall left a note for the parents, but no one contacted him.

Marshall brought the school attendance records for T.C. and J.C. to the hearing, and the records were admitted into evidence. The records showed that T.C. had twenty unexcused absences and five excused absences during the 2002-2003 school year. During the 2001-2002 school year, T.C. was absent 32 times, 26 of which were unexcused. In the 2000-2001 school year, T.C. had nine unexcused absences and seven excused absences. During 1999-2000, T.C. had 26 unexcused absences and 21 excused absences.

For the 2002-2003 school year, J.C.'s records show she was absent 23 times, all of

1. *In the Interest of J.P.*, 253 Ga.App. 732, 560

S.E.2d 318 (2002).

IN RE J.C.

Ga. 477

Cite as 591 S.E.2d 475 (Ga.App. 2003)

which were excused. During the 2001–2002 school year, J.C. had twenty-four unexcused absences and two excused absences. In 2000–2001, J.C. had 13 unexcused absences from school, and in 1999–2000, J.C. had 29 unexcused absences.²

Both the mother and the father testified at the deprivation hearing that they had used marijuana in January or February 2003. Although the Department asked the father that he take a drug screening test shortly before the hearing, he did not do so. The mother testified that she and the father went to a counselor for a drug and alcohol assessment, but she was unable to testify as to the results of the assessment other than that she received “a list of things I could do.” The mother also testified that she and the father had undergone two drug screening tests, but neither the Department nor the parents introduced the results, if any, of these tests.

[2, 3] The parents contend that the evidence was insufficient to support the juvenile court’s findings that the children were deprived due to (1) educational neglect, (2) the parents’ drug abuse, and (3) the parents’ neglect in failing to have adequate food in the house. A deprived child is a child who is “without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child’s physical, mental, or emotional health or morals.”³ In considering a deprivation petition, “[t]he petition is brought on behalf of the child and it is the child’s welfare and not who is responsible for the conditions which amount to deprivation that is the issue.”⁴

2. This recitation omits the records of T.C.’s and J.C.’s numerous tardies.

3. OCGA § 15–11–2(8)(A).

4. (Citation and punctuation omitted.) *In the Interest of J.P.*, 267 Ga. 492, 480 S.E.2d 8 (1997).

5. *In the Interest of C.C.*, 249 Ga.App. 101, 103, 547 S.E.2d 738 (2001).

6. J.C.’s absences during this period were excused; T.C.’s absences were not excused.

7. 246 Ga.App. 85, 539 S.E.2d 584 (2000).

8. *Id.* at 88(2)(d), 539 S.E.2d 584.

Deprivation must be shown by clear and convincing evidence.⁵

[4] 1. *Educational Neglect.* The record documents J.C.’s and T.C.’s high number of absences from school. The mother’s explanation for the children’s unexcused absences was that “[a] lot of times they would sleep late.” The mother admitted that T.C. and J.C. were struggling with a few subjects. Marshall, the school social worker, testified he had received repeated truancy referrals with respect to J.C. and T.C. over the past several years, but that he had been unable to contact the parents. The children’s pattern of absences continued even after the Department began its deprivation investigation. T.C. was absent from school twelve times during February and March 2003, and J.C. was absent nine times during this period.⁶

Relying on *In the Interest of A.G.I.*,⁷ the parents argue that there is no showing that the parents’ actions have harmed the children. But *In the Interest of A.G.I.* was an appeal from a termination of parental rights, not an appeal from a finding of deprivation, and the mother’s actions considered in that case did not directly affect the child’s education.⁸ Under OCGA § 15–11–2(8)(A), a “deprived child” includes a child who is without “education as required by law.”⁹ There is no statutory requirement, and the parents do not show, that specific harm must support a finding that a child is deprived because of the child’s failure to receive the education required by law.¹⁰ Because of J.C.’s and T.C.’s high number of unexcused absences

9. OCGA § 20–2–690.1(a) provides

[e]very parent, guardian, or other person residing within this state having control or charge of any child or children between their sixth and sixteenth birthdays shall enroll and send such child or children to a public school, a private school, or a home study program that meets the requirements for a public school, a private school, or a home study program.

10. See generally *In re D.H.*, 178 Ga.App. 119, 125, 342 S.E.2d 367 (1986) (upholding that part of the lower court’s deprivation order requiring children to attend school); *In the Interest of C.N.*, 231 Ga.App. 639, 640(1), 500 S.E.2d 400 (1998) (part of evidence showing child was deprived was that child missed 16 of 48 days of school and mother was unable to compel child to attend school).

from school, the extended period during which the children continued to miss school, and the parents' unwillingness to talk with the school representative about their children's truancy, we conclude that a rational trier of fact could have found by clear and convincing evidence that the children were not receiving the education required by law and were deprived for that reason.

[5, 6] 2. *Substance abuse.* The parents contend that the evidence was insufficient to support the trial court's findings that the children were deprived by reason of their drug use. The parents testified that, acting independent of one another, they each tried marijuana for the first time in January or early February 2003. The trial court ruled, however, that the parents' explanation of their marijuana use was not credible. We will defer to the trial court's findings as to the credibility of witnesses.¹¹ Furthermore, the father refused to take a requested drug screening test.

A deprived child includes a child without proper parental care or control.¹² In determining whether a child is without proper parental care or control, the trial court may consider, among other things,

[e]xcessive use of or history of chronic unrehabilitated abuse of intoxicating liquors or narcotic or dangerous drugs or controlled substances with the effect of rendering the parent incapable of providing adequately for the physical, mental, emotional, or moral condition and needs of the child.¹³

The parents' admission of isolated drug use, considered alone, may not be clear and convincing evidence that they could not provide for the "physical, mental, emotional, or moral condition and needs" of the children.¹⁴ But the evidence of J.C.'s and T.C.'s truancy, and the condition of the home, which Department agents testified was both dirty and hazardous

to children by reason of the nail gun under the sink and the "pill bottles around," when considered along with the parents' illegal drug use, was sufficient for a rational finder of fact to conclude by clear and convincing evidence that the children were deprived because of a lack of proper parental care and control. "The legislative definition of 'deprived' uses broad enough terminology to allow the juvenile court a sound discretion in reaching such a finding."¹⁵

[7] 3. *Lack of adequate food.* The trial court found that the parents had not provided adequate food in the home. A child may be deprived if he or she is without "subsistence."¹⁶ However, we agree with the parents that there was not clear and convincing evidence to support a finding of deprivation based on the lack of adequate food in the home. During a visit to the home by a social worker, she noticed that there was not a lot of food in the refrigerator, but the mother testified that there was additional food in the cabinets and the freezers. The social worker admitted that she did not look in the drawers of the refrigerator and that there was food in the freezer and kitchen cabinets. Furthermore, there was no evidence that the children appeared underfed or undernourished. The trial court also ruled at the conclusion of the hearing that the lack of adequate food "had been rectified." Based on other evidence, however, we must affirm the order of the juvenile court finding J.C., T.C., and S.C. to be deprived.

Judgment affirmed.

ELDRIDGE and MIKELL, JJ., concur.



11. See *In the Interest of C.S.*, 236 Ga.App. 312, 314(1), 511 S.E.2d 895 (1999).

12. OCGA § 15-11-2(8)(A).

13. OCGA § 15-11-94(b)(4)(B)(ii).

14. See, e.g., *In the Interest of D.E.K.*, 236 Ga. App. 574, 512 S.E.2d 690 (1999) (mother's previ-

ous drug use and other behavior, while not condoned, were insufficient to show child was deprived).

15. *In the Interest of S.S.*, 232 Ga.App. 287, 290(2), 501 S.E.2d 618 (1998).

16. OCGA § 15-11-2(8)(A).

EXHIBIT 30

Georgetown University
Discovery & Impact

COVID-19 Has Harmful Effects on Children in Low-Income Families, Researchers Find

Date Published: August 31, 2020

Share [Facebook](#) [Twitter](#) [Email](#)

Since the pandemic hit, nearly 50% of responding parents in [a new study of low-income families](#) said they had lost their jobs or had decreased work hours and experienced food insecurity, according to Georgetown psychology professor [Anna Johnson](#).



Anna Johnson

“These pervasive experiences of food insecurity are linked to feelings of depression,” says Johnson, who helps lead Georgetown’s [Child Development and Social Policy lab](#).

She says some families reported especially high levels of food insecurity – including 61% of Hispanic/Latinx families, 52% of American Indian/Alaskan Native families, 43% of Black families and 28% of white families.

Impacting Family Ecosystems

“The finding replicates other studies that have found widespread evidence of racial injustice reflected in the impacts of the pandemic,” says fellow psychology professor [Deborah Phillips](#).

“As everyone knows, when the pandemic hit, many workplaces closed and many low-income parents whose job situations were already unstable lost their jobs or had reduced hours and pay,” Johnson explains. “Those experiences impacted the family ecosystem, including children’s development, stress and well-being and parent-child interactions.”

Nearly half of responding parents in the study, which looked at the effect of COVID-19 disruptions and stressors on low-income families with young children, also said their kids have experienced emotional or behavioral problems since the pandemic began.

1,000 Low-Income Families

Johnson and her research team, which includes Ph.D. students Owen Schochet (G’21), Jane Hutchison (G’21) and Anne Partika (G’23), embedded a survey about the effects of COVID-19 into a longitudinal NIH-funded study of approximately 1,000 low-income families in Tulsa, Oklahoma.



Deborah Phillips

That study, directed by Johnson and Phillips, is in partnership with colleagues at the University of Oklahoma-Tulsa and the Tulsa Public Schools, which has been lauded for its successful pre-K program.

The study began in 2016 with low-income families with 3-year-old children, who were about to finish first grade when COVID-19 hit.

Parent and Teacher Well-Being

While the larger study measures child achievement, family and teacher well-being and other factors related to these children each spring and fall, the last set of surveys and assessments took place before the pandemic hit, and Johnson wants to see how they are faring now.

In addition to high rates of food insecurity, the strongest loss of income in Johnson's study also appears to be for Hispanic families, at 65%, with multiracial families and American Indian/Alaskan Native families both at 59%, Black families at 51%, white families at 49% and Asian families at 33 percent.

“Obviously, we couldn’t do interviews in person, so we sent out an electronic survey to parents and teachers asking a range of questions about stress and learning in a virtual environment,” Johnson says.

Pandemic’s Negative Effects

The survey asked questions about potential changes in parental depression, anxiety, sleep, loneliness, physical health, household routines, food access, employment, health and mental health care and more.

“I think it is nearly certain that COVID-19 has had negative effects on young children and family functioning,” Johnson says. “The balancing act that parents are having to do is challenging enough for financially stable families, but low-income families may have to choose between making rent and buying groceries.”

“These low-income kids are also more likely to have unreliable internet access,” she adds. “Some of them don’t have devices beyond a parent’s smartphone, which makes connecting to teachers and classmates for learning, nearly impossible.”

She also notes that opportunities for learning shrank dramatically with the shift to remote instruction, especially for children with special needs. Teachers also struggled to motivate their young learners while parents struggled to find the time to help them, she says.

~~Only 29% of teachers reported that one or more of their students participated in distance learning~~
Other findings of the study determined that:

- Nearly one in five parents reported that their child never communicated with their teacher during distance learning.
- Two in five children spent an hour per day or less on distance learning, as reported by their parents.
- Teachers added time for planning for remote learning and responding to student and parent questions to their “usual” responsibilities.

Supporting Vulnerable Children

“Whether schools are in-person or virtual in the fall, the resources that schools and teachers provide in the form not only of instruction but also of food, social and emotional support and access to the internet, will have a profound effect on the academic growth, health and well-being of young children and their families,” Phillips says.

Johnson says she hopes the survey results will be used by school districts and support staff to help them support low-income children.

“By distinguishing between families who are able to cope with the consequences of COVID-19 from those less able to withstand the pandemic-related stressors, we can inform the development and targeting of home and school-based interventions,” she says.